LOCAL RULES

OF THE UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MASSACHUSETTS

Including Amendments Through
January 6, 2015

LOCAL RULES

OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Effective September 1, 1990

Including Amendments Effective Through
January 1, 2015

TABLE OF RULES

PREFACE

At the request of the Committee on Rules and Practice of the Judicial Conference of the United States, local rules dealing with civil practice have been renumbered to key them to the Federal Rules of Civil Procedure. Accordingly, the numbering is not sequential. Criminal Rules will be numbered from 100 to 199, and district court rules relating to bankruptcy from 200 to 299.

RULE 1.1 TITLE

These rules shall be known as Local Rules of the United States District Court for the District of Massachusetts and cited as "LR, D. Mass." or "LR."

Effective September 1, 1990.

RULE 1.2 APPLICATION

(a) In General. These rules shall apply to all proceedings in the United States District Court for the District of Massachusetts.

(b) Cases Pending When Rules Adopted and Amended. These rules became effective in this form on September 1, 1990, and have been amended from time to time thereafter. They shall, except as applicable time periods may have run, govern all actions and proceedings pending on or commenced after the date of adoption or amendment. Where justice so requires, proceedings in designated cases or other matters before the court on the effective date of the adoption or amendment of these rules shall be governed by the practice of the court before the adoption of these rules.

Effective September 1, 1990; amended effective October 1, 1992.

RULE 1.3 SANCTIONS

Failure to comply with any of the directions or obligations set forth in, or authorized by, these Local Rules may result in dismissal, default, or the imposition of other sanctions as deemed appropriate by the judicial officer.

Adopted effective October 1, 1992.

RULE 3.1 CIVIL COVER SHEET

The party filing the initial pleading shall also file a civil cover sheet in the form prescribed by the Judicial Conference of the United States (JS 44) and the local category sheet.

Effective September 1, 1990.

RULE 4.1 SERVICE OF PROCESS--DISMISSAL FOR FAILURE TO MAKE SERVICE

(a) Any summons not returned with proof that it was served within one hundred twenty (120) days of the filing of the complaint is deemed to be unserved for the purpose of Fed. R. Civ. P. 4(m).

(b) Counsel and parties appearing pro se who seek to show good cause for the failure to make service within the 120 day period prescribed by Fed. R. Civ. P. 4(m) shall do so by filing a motion for enlargement of time under Fed. R. Civ. P. 6(b), together with a supporting affidavit. If on the 14th day following the expiration of the 120 day period good cause has not been shown as provided herein, the clerk shall forthwith automatically enter an order of dismissal for failure to effect service of process, without awaiting any further order of the court. The clerk shall furnish a copy of this local rule to counsel or pro se plaintiffs, together with the summons, and delivery of this copy by the clerk will constitute the notice required by Rule 4(m) Federal Rules of Civil Procedure. Such notice shall constitute the notice required by Fed. R. Civ. P. 4(m). No further notice need be given by the court.

(c) In those cases where the Federal Rules of Civil Procedure authorize service of process to be made in accordance with state practice, it shall be the duty of counsel for the party seeking such service to furnish to the Clerk of Court forms of all necessary orders and sufficient copies of all papers to comply with the requirements of the state practice, together with specific instructions for the making of such service, if such service is to be made by the United States marshal.

Effective September 1, 1990; amended effective January 2, 1995; December 1, 2009.

RULE 4.5 FEES

(a) Except as otherwise provided by law, the clerk and other officers and employees of the court shall not be required to perform any service for a party other than the United States for which a fee is lawfully prescribed, unless the amount of the fee, if it is known, or an amount sufficient to cover the fee reasonably expected by the officer to come due for performance of the service has been deposited with the court.

(b) This provision shall not apply to the United States or a party who is proceeding in forma pauperis, or in any other situation where, in the judgment of the officer entitled to a fee, it is unnecessary to ensure payment of the fee and would work hardship or an injustice.

(c) The clerk shall receive for filing all complaints accompanied by a request to proceed in forma pauperis, and note the date thereon. If the request is denied, the matter will be noted on the miscellaneous business docket. If the request is allowed, or the denial is reversed, the clerk shall file the complaint on the civil docket. Requests to proceed in forma pauperis shall be accompanied by an affidavit containing details of the individual's financial status. (The recommended form is available without charge from the clerk's office.)

(d) In seamen's cases, or cases in which the plaintiff is granted leave to proceed in forma pauperis, the plaintiff remains liable for filing and other fees in the event he is the prevailing party at settlement or otherwise, and he collects a money judgment or any costs taxed by the court or clerk. These fees are payable forthwith upon collection of any sums from the defendant.

(e) The clerk shall on request file notices of appeal whether or not accompanied by the required filing fee.

Effective September 1, 1990. [See Appendix A. Local Rule 4.5 Supplement].

RULE 5.1 FORM AND FILING OF PAPERS

(a) Form and Signing of Papers.

(1) The provisions of the Federal Rules of Civil Procedure pertaining to the form and signing of pleadings, motions, and other papers shall be applicable to all papers filed in any proceeding in this court. The board of bar overseers registration number of each attorney signing such documents, except the United States Attorney and his staff, shall be inscribed below the signature.

(2) All papers filed in the court shall be adapted for flat filing, be filed on 8 ½" x 11" paper without backers and be bound firmly by staple or some such other means (excluding paper or binder clip or rubber band). All papers, except discovery requests and responses, shall be double-spaced except for the identification of counsel, title of the case, footnotes, quotations and exhibits. Discovery requests and responses shall be single-spaced. Except for complaints and notices of appeal, papers that do not conform to the requirements of this subsection shall be returned by the clerk.

(b) Time and Place of Filing. Except as noted in Rule 33-36(f), the original of all papers required to be served under Fed. R. Civ. P. 5(d) shall, unless otherwise submitted to the court, be filed in the office of the clerk within seven (7) days after service has been made.

(c) Requests for Special Action. When any pleading or other paper filed in the court includes a request for special process or relief, or any other request such that, if granted, the court will proceed other than in the ordinary course, the request shall, unless it is noted on the category sheet [see Rule 40.1(a)(1)], be noted on the first page to the right of or immediately beneath the caption.

(d) Additional Copies. Whenever, because of the nature of a proceeding, such as a proceeding before a three-judge district court under 28 U.S.C. § 2284, additional copies of a paper required to be filed are necessary either for the use of the court or to enable the clerk to carry out his duties, it is the responsibility of the party filing or having filed the paper to provide the necessary copies.

(e) Removal of Papers. Except as otherwise provided, papers filed in the office of the clerk shall not be removed from the office except by a judge, official, or employee of the court using the papers in official capacity, or by order of the court. All other persons removing papers from the office of the clerk shall prepare, sign and furnish to the clerk a descriptive receipt therefor in a form satisfactory to the clerk.

Effective September 1, 1990; amended effective December 1, 2009.

RULE 5.2 SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) Manner of Service. Service of all pleadings subsequent to the original complaint and of all other papers required to be served shall be made in the manner specified by Rule 5, Federal Rules of Civil Procedure.

(b) Proof of Service.

(1) Except as otherwise provided by the Federal Rules of Civil Procedure, proof of service of all pleadings and other papers required to be served (except discovery papers that in accordance with Rule 33-36(f) are not to be filed) shall be filed in the office of the clerk promptly after service has been made. The proof shall show the time and manner of service, and may be made by written acknowledgment of service, a certificate of a member of the bar of this court, or an affidavit of the person who served the paper.

(2) A certificate of service of a member of the bar shall appear at the bottom of or on the margin of the last page of the paper to which it relates. The certificate shall be a brief, single-spaced statement and may be in the following form:

> I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each other party by mail (by hand) on (date). (Signature)
>
> On or after the effective date of these local rules, documents not conforming to the requirements of this rule (except notices of appeal) shall be returned by the clerk.

(3) Failure to make proof of service does not affect the validity of the service.

(c) Service on Nonresident Attorney or Party Acting Pro Se.

(1) *Nonresident attorney.* On application of a party, the court may order an attorney who represents any other party and who does not maintain an office within this district where service can be made on him by delivery as provided by Rule 5(b), Federal Rules of Civil Procedure, to designate a member of the bar of this court who does maintain such an office to receive service of all pleadings and other papers in his behalf.

(2) *Party acting pro se.* On application of a party, the court may order any other party who is appearing without an attorney and who does not maintain an office or residence within this district where service can be made on him by delivery as provided by Rule 5(b), Federal Rules of Civil Procedure, to designate an address within the district at which service can be made on him by delivery.

Effective September 1, 1990.

RULE 5.3 PERSONAL DATA IDENTIFIERS

(a) Restrictions on Personal Identifiers in Filings

In compliance with the policy of the Judicial Conference of the United States, and the E-Government Act of 2002, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all filings submitted to the court, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the Court.

(1) *Social Security numbers*. If an individual's social security number must be included in a filing, only the last four digits of that number should be used.

(2) *Names of minor children*. If the involvement of a minor child must be mentioned, only the initials of that child should be used.

(3) *Dates of birth*. If an individual's date of birth must be included in a pleading, only the year should be used.

(4) *Financial account numbers*. If financial account numbers are relevant, only the last four digits of these numbers should be used.

(b) Non-Redacted Filings under Seal

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may file an unredacted document under seal, pursuant to Local Rule 7.2. This document shall be retained by the court as part of the record. The court may, however, still require the party to file a redacted copy for the public file.

(c) Responsibility for Redaction

The responsibility for redacting these personal identifiers rests solely with counsel and the parties The Clerk will not review each pleading for compliance with this rule.

Effective May 6, 2003.

RULE 5.4 FILING AND SERVICE BY ELECTRONIC MEANS

(A) Electronic Filing Generally. Unless exempt or otherwise ordered by the court, all pleadings and other papers submitted to the court must be filed, signed, and verified by electronic means as provided herein.

(B) ECF Administrative Procedures. Subject to the supervision of the court, the clerk will maintain Electronic Case Filing (ECF) Administrative Procedures, including procedures for the registration of attorneys and other authorized users and for distribution of passwords to permit electronic filing. All electronic filings must be made in accordance with the ECF Administrative Procedures. The ECF Administrative Procedures will be generally available to the public and shall be posted on the court's web site.

(C) Service of Pleadings. Unless exempt or otherwise ordered by the court, all pleadings and other papers must be served on other parties by electronic means. Transmission of the Notice of Electronic Filing (NEF) through the court's transmission facilities will constitute service of the filed document upon a registered ECF user. Any pleading or other paper served by electronic means must bear a certificate of service in accordance with Local Rule 5.2(b).

(D) Deadlines. Although the ECF system is generally available 24 hours a day for electronic filing, that availability will not alter filing deadlines, whether set by rule, court order, or stipulation. All electronic transmissions of documents must be completed prior to 6:00 p.m. to be considered timely filed that day.

(E) Civil Case Opening Documents. All ECF filers registered in the District of Massachusetts must file civil case opening documents, such as a complaint (or petition or notice of removal), civil action cover sheet, or category sheet, electronically. Cases which include sealed or *ex parte* documents and supporting materials presented contemporaneously with civil case opening documents may be filed and served initially in paper format and not electronically. *Pro se* filers, others exempt from electronic filing, or otherwise ordered by the court, may file case opening documents in paper format and not electronically. Whenever possible, at the time a civil case is submitted in paper format, the filing party may also file a disk with the clerk’s office containing in PDF format the opening documents and any emergency motions and supporting papers not filed electronically.

(F) State Court Record in Removal Proceedings. Within twenty eight days after filing a notice of removal in a civil action, a party removing an action under 28 U.S.C. §§ 1441-52 must file certified or attested copies of all docket entries, records, and proceedings in the state court in paper format. Unless exempt or otherwise ordered by the court, the removing party must also file a disk with the clerk’s office containing the state court record in PDF format.

(G) Exemptions.

(1) *Documents That Should Not Be Filed Electronically*. The following types of documents must not be filed electronically, and will not be scanned into the ECF system by the clerk’s office:

(a) sealed documents;
(b) *ex parte* motions;
(c) documents generated as part of an alternative dispute resolution (ADR) process;
(d) the administrative record in social security and other administrative proceedings;
(e) the state court record in proceedings under 28 U.S.C. § 2254; and
(f) such other types of documents as the clerk may direct in the ECF Administrative Procedures.

(2) *Documents That Need Not Be Filed Electronically*. The following types of documents need not be filed electronically, but may be scanned into the ECF system by a filing party or the clerk's office:

(a) handwritten pleadings;
(b) documents filed by *pro se* litigants who are incarcerated or who are not registered ECF users;
(c) indictments, informations, criminal complaints, and the criminal JS45 form;
(d) affidavits for search or arrest warrants and related documents;
(e) documents received from another court under Fed. R. Crim. P. 20 or 40;
(f) appearance bonds;
(g) any document in a criminal case containing the original signature of a defendant, such as a waiver of indictment or a plea agreement;
(h) petitions for violations of supervised release;
(i) executed service of process documents under Rule 4; and
(j) such other types of documents as the clerk may direct in the ECF Administrative Procedures.

Adopted October 3, 2005 to be effective January 1, 2006; amended effective January 1, 2009; *December 1, 2009.*

RULE 7.1 MOTION PRACTICE

(a) Control of Motion Practice.

(1) *Plan for the Disposition of Motions.* At the earliest practicable time, the judicial officer shall establish a framework for the disposition of motions, which, at the discretion of the judicial officer, may include specific deadlines or general time guidelines for filing motions. This framework may be amended from time to time by the judicial officer as required by the progress of the case.

(2) *Motion Practice.* No motion shall be filed unless counsel certify that they have conferred and have attempted in good faith to resolve or narrow the issue.

(3) *Unresolved Motions.* The court shall rule on motions as soon as practicable, having in mind the reporting requirements set forth in the Civil Justice Reform Act.

(b) Submission of Motion and Opposition to Motion.

(1) *Submission of Motion.* A party filing a motion shall at the same time file a memorandum of reasons, including citation of supporting authorities, why the motion should be granted. Affidavits and other documents setting forth or evidencing facts on which the motion is based shall be filed with the motion.

(2) *Submission of Opposition to a Motion.* A party opposing a motion, shall file an opposition within 14 days after the motion is served, unless (1) the motion is for summary judgment, in which case the opposition shall be filed within 21 days after the motion is served, or (2) another period is fixed by rule or statute, or by order of the court. A party opposing a motion shall file, in the same (rather than a separate), document a memorandum of reasons, including citation of supporting authorities, why the motion should not be granted. Affidavits and other documents setting forth or evidencing facts on which the opposition is based shall be filed with the opposition. The fourteen day period is intended to include the period specified by the civil rules for mailing time and provide for a uniform period regardless of the use of the mails.

(3) *Additional Papers.* All other papers not filed as indicated in subsections (b)(1) and (2), whether in the form of a reply brief or otherwise, may be submitted only with leave of court.

(4) *Length of Memoranda.* Memoranda supporting or opposing allowance of motions shall not, without leave of court, exceed twenty (20) pages, double-spaced.

(c) Service. All papers filed pursuant to section (b) shall be served unless the moving party indicates in writing on the face of the motion that ex parte consideration is requested. Motions filed “ex parte” and related papers need not be served until the motion has been ruled upon or the court orders that service be made.

(d) Request for Hearing. Any party making or opposing a motion who believes that oral argument may assist the court and wishes to be heard shall include a request for oral argument in

a separate paragraph of the motion or opposition. The request should be set off with a centered caption, “REQUEST FOR ORAL ARGUMENT.”

(e) Hearing. If the court concludes that there should be a hearing on a motion, the motion will be set down for hearing at such time as the court determines.

(f) Decision of Motion Without Hearing. Motions that are not set down for hearing as provided in subsection (e) will be decided on the papers submitted after an opposition to the motion has been filed, or, if no opposition is filed, after the time for filing an opposition has elapsed.

Effective September 1, 1990; amended effective October 1, 1992; December 1, 2009

RULE 7.2 IMPOUNDED AND CONFIDENTIAL MATERIALS

(a) Whenever a party files a motion to impound, the motion shall contain a statement of the earliest date on which the impounding order may be lifted, or a statement, supported by good cause, that the material should be impounded until further order of the court. The motion shall contain suggested custody arrangements for the post-impoundment period.

(b) The clerk shall attach a copy of the order to the envelope or other container holding the impounded material.

(c) If the impoundment order provides a cut-off date but no arrangements for custody, the clerk (without further notice to the court or the parties) shall place the material in the public information file upon expiration of the impoundment period. If the order provides for post-impoundment custody by counsel or the parties, the materials must be retrieved immediately upon expiration of the order, or the clerk (without further notice to the court or the parties) shall place the material in the public file.

(d) Motions for impoundment must be filed and ruled upon prior to submission of the actual material sought to be impounded, unless the court orders otherwise.

(e) The court will not enter blanket orders that counsel for a party may at any time file material with the clerk, marked confidential, with instructions that the clerk withhold the material from public inspection. A motion for impoundment must be presented each time a document or group of documents is to be filed.

Effective September 1, 1990.

RULE 7.3 CORPORATE DISCLOSURE STATEMENT

(A) A nongovernmental corporate party to a civil action or proceeding in this court must file a statement identifying any parent corporation and any publicly held company that owns 10% or more of the party's stock.

(B) A party must file the Local Rule 7.3(A) statement upon its first appearance, pleading, petition, motion, response, or other request addressed to the court and must promptly supplement the statement upon any change in the information that the statement requires.

Adopted December 4, 2000; effective January 1, 2001.

RULE 10.1 [DELETED]

Deleted effective May 6, 2003.

RULE 15.1 ADDITION OF NEW PARTIES

(a) Amendments Adding Parties. Amendments adding parties shall be sought as soon as an attorney reasonably can be expected to have become aware of the identity of the proposed new party.

(b) Service on New Party. A party moving to amend a pleading to add a new party shall serve, in the manner contemplated by Fed. R. Civ. P. 5(b), the motion to amend upon the proposed new party at least 14 days in advance of filing the motion, together with a separate document stating the date on which the motion will be filed. A motion to amend a pleading to add a new party shall be accompanied by a certificate stating that it has been served in advance on the new party as required by this rule.

Adopted effective October 1, 1992; amended effective January 2, 1995; December 1, 2009.

RULE 16.1 EARLY ASSESSMENT OF CASES

(a) Scheduling Conference in Civil Cases. In every civil action, except in categories of actions exempted by LR 16.2 as inappropriate for scheduling procedures, the judge or, in the interests of the efficient administration of justice, a designated magistrate judge shall convene a scheduling conference as soon as practicable, but in any event within ninety (90) days after the appearance of a defendant and within one hundred twenty (120) days after the complaint has been served on a defendant. In cases removed to this court from a state court or transferred from any other federal court, the judge or designated magistrate judge shall convene a scheduling conference within sixty (60) days after removal or transfer.

(b) Obligation of Counsel to Confer. Unless otherwise ordered by the judge, counsel for the parties must, pursuant to Fed. R. Civ. P. 26(f), confer at least 21 days before the date for the scheduling conference for the purpose of:

(1) preparing an agenda of matters to be discussed at the scheduling conference,

(2) preparing a proposed pretrial schedule for the case that includes a plan for discovery, and

(3) considering whether they will consent to trial by magistrate judge.

(c) Settlement Proposals. Unless otherwise ordered by the judge, the plaintiff shall present written settlement proposals to all defendants no later than 14 days before the date for the scheduling conference. Defense counsel shall have conferred with their clients on the subject of settlement before the scheduling conference and be prepared to respond to the proposals at the scheduling conference.

(d) Joint Statement. Unless otherwise ordered by the judge, the parties are required to file, no later than seven (7) days before the scheduling conference and after consideration of the topics contemplated by Fed. R. Civ. P. 16(b) & (c) and 26(f), a joint statement containing a proposed pretrial schedule, which shall include:

(1) a joint discovery plan scheduling the time and length for all discovery events, that shall

(a) conform to the obligation to limit discovery set forth in Fed. R. Civ. P. 26(b), and

(b) take into account the desirability of conducting phased discovery in which the first phase is limited to developing information needed for a realistic assessment of the case and, if the case does not terminate, the second phase is directed at information needed to prepare for trial; and

(2) a proposed schedule for the filing of motions; and

(3) certifications signed by counsel and by an authorized representative of each party affirming that each party and that party's counsel have conferred:

(a) with a view to establishing a budget for the costs of conducting the full course and various alternative courses--of the litigation; and

(b) to consider the resolution of the litigation through the use of alternative dispute resolution programs such as those outlined in LR 16.4.

To the extent that all parties are able to reach agreement on a proposed pretrial schedule, they shall so indicate. To the extent that the parties differ on what the pretrial schedule should be, they shall set forth separately the items on which they differ and indicate the nature of that difference. The purpose of the parties' proposed pretrial schedule or schedules shall be to advise the judge of the parties' best estimates of the amounts of time they will need to accomplish specified pretrial steps. The parties' proposed agenda for the scheduling conference, and their proposed pretrial schedule or schedules, shall be considered by the judge as advisory only.

(e) Conduct of Scheduling Conference. At or following the scheduling conference, the judge shall make an early determination of whether the case is "complex" or otherwise appropriate for careful and deliberate monitoring in an individualized and case-specific manner. The judge shall consider assigning any case so categorized to a case management conference or series of conferences under LR 16.3. The factors to be considered by the judge in making this decision include:

(1) the complexity of the case (the number of parties, claims, and defenses raised, the legal difficulty of the issues presented, and the factual difficulty of the subject matter);

(2) the amount of time reasonably needed by the litigants and their attorneys to prepare the case for trial;

(3) the judicial and other resources required and available for the preparation and disposition of the case;

(4) whether the case belongs to those categories of cases that:

(a) involve little or no discovery,

(b) ordinarily require little or no additional judicial intervention, or

(c) generally fall into identifiable and easily managed patterns;

(5) the extent to which individualized and case-specific treatment will promote the goal of reducing cost and delay in civil litigation; and

(6) whether the public interest requires that the case receive intense judicial attention.

In other respects, the scheduling conference shall be conducted according to the provisions for a pretrial conference under Federal Rule of Civil Procedure 16 and for a case management conference under LR 16.3.

(f) Scheduling Orders. Following the conference, the judge shall enter a scheduling order that will govern the pretrial phase of the case. Unless the judge determines otherwise, the scheduling order shall include specific deadlines or general time frameworks for:

(1) amendments to the pleadings;

(2) service of, and compliance with, written discovery requests;

(3) the completion of depositions, including, if applicable, the terms for taking and using videotape depositions;

(4) the identification of trial experts;

(5) the sequence of disclosure of information regarding experts contemplated by Fed. R. Civ. P. 26(b);

(6) the filing of motions;

(7) a settlement conference, to be attended by trial counsel and, in the discretion of the judge, their clients;

(8) one or more case management conferences and/or the final pretrial conference;

(9) a final pretrial conference, which shall occur within eighteen months after the filing of the complaint;

(10) the joinder of any additional parties;

(11) any other procedural matter that the judge determines is appropriate for the fair and efficient management of the litigation.

(g) Modification of Scheduling Order. The scheduling order shall specify that its provisions, including any deadlines, having been established with the participation of all parties, can be modified only by order of the judge, or the magistrate judge if so authorized by the judge, and only upon a showing of good cause supported by affidavits, other evidentiary materials, or references to pertinent portions of the record.

(h) Definition of Judge. As used in this rule, "judge" refers to the United States District Judge to whom the case is assigned or to the United States Magistrate Judge who has been

assigned the case pursuant to 28 U.S.C. § 636(c), if the Magistrate Judge has been assigned the case prior to the convening of the scheduling conference mandated by this rule.

Adopted effective October 1, 1992; amended effective January 2, 1995; December 10, 1996; December 4, 2000; January 2, 2001; December 1, 2009.

RULE 16.2 EXEMPTIONS FROM FED. R. CIV. P. 16(b)

Pursuant to Rule 16(b), Federal Rules of Civil Procedure, as amended, the following categories of actions (based upon the numbered "Nature of Suit" list on form JS 44) are exempted in this district from the scheduling and planning provisions of Rule 16(b), Federal Rules of Civil Procedure, as inappropriate actions for such scheduling and planning:

CONTRACT
- 150 Recovery of Overpayment & Enforcement of Judgment
- 152 Recovery of Defaulted Student Loans
- 153 Recovery of Overpayment of Veterans Benefits

REAL PROPERTY
- 210 Condemnation
- 220 Foreclosure
- 230 Rent Lease & Ejectment
- 245 Tort Product Liability - Asbestos Cases Only

PRISONER PETITIONS
- 510 Vacate Sentence (2255)
- 530 Habeas Corpus
- 535 Death Penalty
- 540 Mandamus & Other
- 550 Civil Rights
- 555 Prison Condition Cases
- 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- 625 Drug Related Seizure

BANKRUPTCY
- 422 Appeal (22 U.S.C. 158)
- 423 Withdrawal (28 U.S.C. 157)

SOCIAL SECURITY
- 861 HIA (1395ff)
- 862 Black Lung (923)
- 863 DIWC/DIWW (405(g))
- 864 SSID Title XVI
- 865 RSI (405(g))

TAX SUITS
- 871 IRS--Third Party (26 U.S.C. 7609)

OTHER STATUTES

400 State Reapportionment

450 Commerce

Effective September 1, 1990.; amended effective January 3, 2012

RULE 16.3 CASE MANAGEMENT CONFERENCES

(a) Conduct of Case Management Conferences. Case management conferences shall be presided over by a judicial officer who, in furtherance of the scheduling order required by LR 16.1(f) may:

(1) explore the possibility of settlement;

(2) identify or formulate (or order the attorneys to formulate) the principal issues in contention;

(3) prepare (or order the attorneys to prepare) a specific discovery schedule and discovery plan that, if the presiding judicial officer deems appropriate, might:

> (a) identify and limit the volume of discovery available in order to avoid unnecessary or unduly burdensome or expensive discovery;
>
> (b) sequence discovery into two or more stages; and
>
> (c) include time limits set for the completion of discovery;

(4) establish deadlines for filing motions and a time framework for their disposition;

(5) provide for the "phased resolution" or "bifurcation of issues for trial" consistent with Federal Rule 42(b); and

(6) explore any other matter that the judicial officer determines is appropriate for the fair and efficient management of the litigation.

(b) Obligation of Counsel to Confer. The judicial officer may require counsel for the parties to confer before the case management conference for the purpose of preparing a joint statement containing:

(1) an agenda of matters that one or more parties believe should be addressed at the conference; and

(2) a report advising the judicial officer whether the case is progressing within the allotted time limits and in accord with the specified pretrial steps.

This statement is to be filed with the court no later than seven (7) days before the case management conference.

(c) Additional Case Management Conferences. Nothing in this rule shall be construed to prevent the convening of additional case management conferences by the judicial officer as may be thought appropriate in the circumstances of the particular case. In any event, a conference should not terminate without the parties being instructed as to when and for what purpose they are to return to the court.

Adopted effective October 1, 1992, amended effective December 1, 2009.

RULE 16.4 ALTERNATIVE DISPUTE RESOLUTION

(a) The judicial officer shall encourage the resolution of disputes by settlement or other alternative dispute resolution programs.

(b) Settlement. At every conference conducted under these rules, the judicial officer shall inquire as to the utility of the parties conducting settlement negotiations, explore means of facilitating those negotiations, and offer whatever assistance may be appropriate in the circumstances. Assistance may include a reference of the case to another judicial officer for settlement purposes. Whenever a settlement conference is held, a representative of each party who has settlement authority shall attend or be available by telephone.

(c) Other Alternative Dispute Resolution Programs.

(1) *Discretion of Judicial Officer.* The judicial officer, following an exploration of the matter with all counsel, may refer appropriate cases to alternative dispute resolution programs that have been designated for use in the district court or that the judicial officer may make available. The dispute resolution programs described in subdivisions (2) through (4) are illustrative, not exclusive.

(2) *Mini-Trial.*

(a) The judicial officer may convene a mini-trial upon the agreement of all parties, either by written motion or their oral motion in open court entered upon the record.

(b) Each party, with or without the assistance of counsel, shall present his or her position before:

(1) selected representatives for each party, or

(2) an impartial third party, or

(3) both selected representatives for each party and an impartial third party.

(c) An impartial third party may issue an advisory opinion regarding the merits of the case.

(d) Unless the parties agree otherwise, the advisory opinion of the impartial third party is not binding.

(e) The impartial third party's advisory opinion is not appealable.

(f) Neither the advisory opinion of an impartial third party nor the presentations of the parties shall be admissible as evidence in any subsequent proceeding, unless

otherwise admissible under the rules of evidence. Also, the occurrence of the mini-trial shall not be admissible.

(3) *Summary Jury Trial.*

(a) The judicial officer may convene a summary jury trial:

(1) with the agreement of all parties, either by written motion or their oral motion in court entered upon the record, or

(2) upon the judicial officer's determination that a summary jury trial would be appropriate, even in the absence of the agreement of all the parties.

(b) There shall be six (6) jurors on the panel, unless the parties agree otherwise.

(c) The panel may issue an advisory opinion regarding:

(1) the respective liability of the parties, or

(2) the damages of the parties, or

(3) both the respective liability and the damages of the parties.

Unless the parties agree otherwise, the advisory opinion is not binding and it shall not be appealable.

(d) Neither the panel's advisory opinion nor its verdict, nor the presentations of the parties shall be admissible as evidence in any subsequent proceeding, unless otherwise admissible under the rules of evidence. Also, the occurrence of the summary jury trial shall not be admissible.

(4) *Mediation.*

(a) The judicial officer may grant mediation upon the agreement of all parties.

(b) The mediator selected may be an individual, group of individuals or institution. The mediator shall be compensated as agreed by the parties.

(c) The mediator shall meet, either jointly or separately, with each party and counsel for each party and shall take any other steps that may appear appropriate in order to assist the parties to resolve the impasse or controversy.

(d) If mediation does not result in a resolution of the dispute, the parties shall promptly report the termination of mediation to the judicial officer.

(e) If an agreement is reached between the parties on any issues, the mediator shall make appropriate note of that agreement and refer the parties to the judicial officer for entry of a court order.

(f) Any communication related to the subject matter of the dispute made during the mediation by any participant, mediator, or any other person present at the mediation shall be a confidential communication to the full extent contemplated by Fed. R. Evid. 408. No admission, representation, statement, or other confidential communication made in setting up or conducting the proceedings not otherwise discoverable or obtainable shall be admissible as evidence or subject to discovery.

Adopted effective October 1, 1992.

RULE 16.5 FINAL PRETRIAL CONFERENCE

(a) Schedule of Conference. The judicial officer to whom the case is assigned for trial may set a new date for the final pretrial conference if that judicial officer determines that resolution of the case through settlement or some other form of alternative dispute resolution is imminent.

(b) Representation by Counsel; Settlement. Unless excused by the judicial officer to whom the case is assigned for trial, each party shall be represented at the final pretrial conference by counsel who will conduct the trial. Counsel shall have full authority from their clients with respect to settlement and shall be prepared to advise that judicial officer as to the prospects of settlement.

(c) Disclosures Preliminary to the Pretrial Conference. As provided in LR 26.4(a), the disclosure regarding experts required by Fed. R. Civ. P. 26(a)(2) shall be made at least 90 days before the final pretrial conference. No later than 28 days before the date of the pretrial conference the parties shall make the pretrial disclosures required by Fed. R. Civ. P. 26(a)(3). Any objections to the use of the evidence identified in the pretrial disclosure required by Fed. R. Civ. P. 26(a)(3) shall be made before counsel confer regarding the pretrial memorandum, shall be a subject of their conference and shall not be filed with the court unless the objections cannot be resolved. Filing of such objections shall be made pursuant to subsection (d)(12) of this rule.

(d) Obligation of Counsel to Confer and Prepare Pretrial Memorandum. Unless otherwise ordered by the judicial officer to whom the case is assigned for trial, counsel for the parties shall confer no later than 14 days before the date of the final pretrial conference for the purpose of jointly preparing a pretrial memorandum for submission to the judicial officer. Unless otherwise ordered by the judicial officer to whom the case is assigned for trial, the parties are required to file, no later than seven (7) days prior to the pretrial conference, a joint pretrial memorandum which shall set forth:

(1) a concise summary of the evidence that will be offered by:

(a) plaintiff;

(b) defendant; and

(c) other parties;

with respect to both liability and damages (including special damages, if any);

(2) the facts established by pleadings or by stipulations or admissions of counsel;

(3) contested issues of fact;

(4) any jurisdictional questions;

(5) any questions raised by pending motions;

(6) issues of law, including evidentiary questions, together with supporting authority;

(7) any requested amendments to the pleadings;

(8) any additional matters to aid in the disposition of the action;

(9) the probable length of the trial;

(10) the names, addresses and telephone numbers of witnesses to be called (expert and others) and whether the testimony of any such witness is intended to be presented by deposition;

(11) the proposed exhibits; and

(12) the parties' respective positions on any remaining objections to the evidence identified in the pretrial disclosure required by Fed. R. Civ. P. 26(a)(3).

(e) Conduct of Conference. The agenda of the final pretrial conference, when possible and appropriate, shall include:

(1) a final and binding definition of the issues to be tried;

(2) the disclosure of expected and potential witnesses and the substance of their testimony;

(3) the exchange of all proposed exhibits;

(4) a pretrial ruling on objections to evidence;

(5) the elimination of unnecessary or redundant proof, including the limitation of expert witnesses;

(6) a consideration of the bifurcation of the issues to be tried;

(7) the establishment of time limits and any other restrictions on the trial;

(8) a consideration of methods for expediting jury selection;

(9) a consideration of means for enhancing jury comprehension and simplifying and expediting the trial;

(10) a consideration of the feasibility of presenting direct testimony by written statement;

(11) the exploration of possible agreement among the parties on various issues and encouragement of a stipulation from the parties, when that will serve the ends of justice, including:

(a) that direct testimony of some or all witnesses will be taken in narrative or affidavit form, with right of cross-examination reserved;

(b) that evidence in affidavit form will be read to the jury by the witnesses, or by counsel or another reader with court approval; and

(c) that time limits shorter than those set forth in Rule 43.1 be used for trial; and

(12) a consideration of any other means to facilitate and expedite trial.

(f) Trial Brief. A trial brief, including requests for rulings or instructions, shall be filed by each party seven (7) days before the commencement of trial. Each party may supplement these requests at the trial if the evidence develops otherwise than as anticipated.

Adopted effective October 1, 1992; amended effective January 2, 1995; December 1, 2009.

RULE 16.6 SCHEDULING AND PROCEDURES IN PATENT INFRINGEMENT CASES

(A) Additional Items for Consideration by the Court and the Parties

In addition to the parties' obligations under Fed. R. Civ. P. 26 (f) and LR 16.1, the parties in cases raising issues of patent infringement shall consider and address in their joint statement under L.R. 16.1 the following issues:

(1) The timing for disclosing initial infringement and invalidity positions;

(2) The process for identifying disputed claim terms, exchanging proposed claim constructions, and claim construction briefing;

(3) The timing of and procedure for the claim construction hearing, including:

(a) whether the Court will decide claim construction through live testimony at a hearing or based on the papers and attorney argument; and

(b) the timing of claim construction relative to summary judgment, expert discovery, and the close of fact discovery.

(4) The need for tutorials on the relevant technology, including:

(a) the form and scope of any such tutorials; and

(b) the timing for such tutorials.

(5) The identification of dispositive issues that may lead to an early resolution of the litigation.

(6) Whether the court should authorize the filing under seal of any documents that contain confidential information.

(7) Procedures for, and limits (if any) to be placed on, the preservation and discovery of electronically stored information, including:

(a) whether preservation and discovery of electronically stored information should be limited to that located on the parties' active computer systems or extended to backup systems;

(b) the identification of key persons, if any, who should have their electronically stored information produced;

(c) whether production of electronically stored information should be limited to discrete time periods;

(d) whether costs of producing electronically stored information should be shifted, particularly costs of preserving and producing information stored on backup systems.

(B) Scheduling Order

The Scheduling Conference in cases raising issues of patent infringement should result in a special tailored Scheduling Order. A template for such a Scheduling Order is set forth as a default in the Appendix.

Adopted effective November 4, 2008. [See Appendix E. Local Rule 16.6 Supplement]

RULE 26.1 CONTROL OF DISCOVERY

(a) Cooperative Discovery. The judicial officer should encourage cost effective discovery by means of voluntary exchange of information among litigants and their attorneys. This may be accomplished through the use of:

(1) informal, cooperative discovery practices in which counsel provide information to opposing counsel without resort to formal discovery procedures; or

(2) stipulations entered into by the parties with respect to deposition notices, waiver of signing, and other matters, except that the parties may not enter into stipulations extending the time for responding to discovery requests or otherwise modify discovery procedures ordered by the judicial officer.

(b) Disclosure Orders. The judicial officer may order the parties to submit at the scheduling conference, or at any subsequent time the officer deems appropriate, sworn statements disclosing certain information to every other party. At the discretion of the judicial officer, this order may direct the submission of:

(1) a sworn statement from a claimant, whether plaintiff, third-party plaintiff, cross-claimant, or counter-claimant, that:

> (a) itemizes all economic loss and provides a computation of damages for which recovery is sought, if any, sustained before the date of service of process;
>
> (b) identifies all persons then known to the claimant or the claimant's attorney who witnessed or participated in the transaction or occurrence giving rise to the claim or otherwise known or believed to have substantial discoverable information about the claim or defenses, together with a statement of the subject and a brief summary of that information;
>
> (c) identifies all opposing parties, and all officers, directors, and employees of opposing parties, from whom statements have been obtained by or on behalf of the claimant regarding the subject matter of the claim; and
>
> (d) identifies all governmental agencies or officials then known to the claimant or the claimant's attorney to have investigated the transaction or occurrence giving rise to the claim; and

(2) a sworn statement from a defendant, whether the direct defendant, third-party defendant, crossclaim defendant, or counterclaim defendant, that identifies:

> (a) all persons then known to the defendant or the defendant's attorneys who witnessed the transaction or occurrence giving rise to the claim or otherwise is known or believed to have substantial discoverable information about the claims or defenses, together with a statement of the subject and a brief summary of that information;

(b) all opposing parties, and all officers, directors, and employees of opposing parties, from whom statements have been obtained by or on behalf of the defendant regarding the subject matter of the claims or defenses; and

(c) all government agencies or officials then known to the defendant or the defendant's attorneys to have investigated the transaction or occurrence giving rise to the claims or defenses.

Noncompliance may be excused only by order of the judicial officer.

(c) Discovery Event Limitations. Unless the judicial officer orders otherwise, the number of discovery events shall be limited for each side (or group of parties with a common interest) to ten (10) depositions, twenty-five (25) interrogatories, twenty-five (25) requests for admissions, and two (2) separate sets of requests for production. For purposes of determining the number of interrogatories propounded, subparts of a basic interrogatory which are logical extensions of the basic interrogatory and seek only to obtain specified additional particularized information with respect to the basic interrogatory shall not be counted separately from the basic interrogatory.

Adopted effective October 1, 1992; amended effective January 2, 1995.

RULE 26.2 SEQUENCES OF DISCOVERY

(a) Automatic Required Disclosure. Unless otherwise ordered by the judge, or by the United States Magistrate Judge who has been assigned the case pursuant to 28 U.S.C. § 636(c), disclosure required by Fed. R. Civ. P. 26(a)(1) should be made as soon as practicable and in any event must be made at or within 14 days after the meeting required by Fed. R. Civ. P. 26(f) and LR 16.1(b). Unless otherwise ordered by such a judicial officer, before a party may initiate discovery, that party must provide to other parties disclosure of the information and materials called for by Fed. R. Civ. P. 26(a)(1).

(b) Further Discovery. Should a party exhaust the opportunities for any type of discovery events under LR 26.1(c), any requests that such party may make for additional interrogatories, depositions, admissions or the production of documents beyond that allowed pursuant to LR 26.1(c) shall be by discovery motion. All requests for additional discovery events, extensions of deadlines, for the completion of discovery or for postponement of the trial must be signed by the attorney and the party making the request.

(c) Certification of Discovery Motions. The judicial officer shall not consider any discovery motion that is not accompanied by a certification, as required by LR 7.1(a)(2) and LR 37.1(b), that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion. In evaluating any discovery motion, the judicial officer may consider the desirability of conducting phased discovery, as contemplated by LR 26.3.

(d) Removed and Transferred Actions. In all actions removed to this court or transferred to this court from another federal court, the submission required by subdivision (a) shall be made as prescribed in that subdivision, and if discovery was initiated before the action being removed or transferred to this court, then the submission required by subdivision (a) shall be made within 21 days of the date of removal or transfer.

Adopted effective October 1, 1992; amended effective January 2, 1995; December 10, 1996; December 4, 2000; December 1, 2009.

RULE 26.3 PHASING OF DISCOVERY

In order to facilitate settlement and the efficient completion of discovery, the judicial officer has discretion to structure discovery activities by phasing and sequencing the topics which are the subject of discovery. For example, an order may be framed limiting the first phase to developing information needed for a realistic assessment of the case. If the case does not terminate, the second phase would be directed at information needed to prepare for trial.

Adopted effective October 1, 1992; amended effective January 2, 1995.

RULE 26.4 SPECIAL PROCEDURES FOR HANDLING EXPERTS

(a) Objections to Expert Witnesses. Unless otherwise directed by the judicial officer, the disclosure regarding experts required by Fed. R. Civ. P. 26(a)(2) shall be made at least 90 days before the final pretrial conference. A party who intends to object to the qualifications of an expert witness, or to the introduction of any proposed exhibit related to that expert's testimony, shall give written notice of the grounds of objection, together with supporting authority, to all other parties no later than the time for such objections provided in LR 16.5(c).

(b) Setting Terms and Conditions. At the final pretrial conference, the judge shall consider:

(1) precluding the appearance of expert witnesses not timely identified;

(2) precluding use of any trial testimony by an expert at variance with any written statement or any deposition testimony;

(3) making a ruling concerning the use of expert depositions, including videotaped depositions at trial; and

(4) making any other ruling on the admissibility of expert testimony at the trial.

Adopted effective October 1, 1992; amended effective January 2, 1995.

RULE 26.5 UNIFORM DEFINITIONS IN DISCOVERY REQUESTS

(a) Incorporation by Reference and Limitations. The full text of the definitions set forth in paragraph (c) is deemed incorporated by reference into all discovery requests, but shall not preclude

(1) the definition of other terms specific to the particular litigation;

(2) the use of abbreviations; or

(3) a narrower definition of a term defined in paragraph (c).

(b) Effect on Scope of Discovery. This rule is not intended to broaden or narrow the scope of discovery permitted by the Federal Rules of Civil Procedure.

(c) Definitions. The following definitions apply to all discovery requests:

(1) *Communication.* The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

(2) *Document.* The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a). A draft or non-identical copy is a separate document within the meaning of this term.

(3) *Identify (With Respect to Persons).* When referring to a person, "to identify" means to give, to the extent known, the person's full name, present or last known address, and, when referring to a natural person, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(4) *Identify (With Respect to Documents).* When referring to documents, "to identify" means to give, to the extent known, the

(a) type of document;

(b) general subject matter;

(c) date of the document; and

(d) author(s), addressee(s), and recipient(s).

(5) *Parties.* The terms "plaintiff" and "defendant" as well as a party's full or abbreviated name or a pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries, or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

(6) *Person.* The term "person" is defined as any natural person or any business, legal, or governmental entity or association.

(7) *Concerning.* The term "concerning" means referring to, describing, evidencing, or constituting.

(8) *State the Basis.* When an interrogatory calls upon a party to "state the basis" of or for a particular claim, assertion, allegation, or contention, the party shall

> (a) identify each and every document (and, where pertinent, the section, article, or subparagraph thereof), which forms any part of the source of the party's information regarding the alleged facts or legal conclusions referred to by the interrogatory;
>
> (b) identify each and every communication which forms any part of the source of the party's information regarding the alleged facts or legal conclusions referred to by the interrogatory;
>
> (c) state separately the acts or omissions to act on the part of any person (identifying the acts or omissions to act by stating their nature, time, and place and identifying the persons involved) which form any part of the party's information regarding the alleged facts or legal conclusions referred to in the interrogatory; and
>
> (d) state separately any other fact which forms the basis of the party's information regarding the alleged facts or conclusions referred to in the interrogatory.

Adopted effective October 1, 1992.

RULE 26.6 COURT FILINGS AND COSTS

(a) Nonfiling of Discovery Materials. Automatic or voluntary disclosure materials, depositions upon oral examinations and notices thereof, depositions upon written questions, interrogatories, requests for documents, requests for admissions, answers and responses thereto, and any other requests for or products of the discovery process shall not be filed unless so ordered by the court or for use in the proceeding. The party taking a deposition or obtaining any material through discovery is responsible for its preservation and delivery to the court if needed or so ordered. If for any reason a party or concerned citizen believes that any of the named documents should be filed, an ex parte request may be made that such document be filed, stating the reasons therefor. The court may also order filing sua sponte. If relief is sought under Fed. R. Civ. P. 26(c) or 37, copies of the relevant portions of disputed documents shall be filed with the court contemporaneously with any motion. If the moving party under Fed. R. Civ. P. 56 or the opponent relies on discovery documents, copies of the pertinent parts thereof shall be filed with the motion or opposition.

(b) Copying Expense for Discovery Materials.

(1) *Inspection of Documents.* Except as otherwise provided in an order entered pursuant to Fed. R. Civ. P. 26(c), all parties to an action shall be entitled to inspect documents produced by another party pursuant to Fed. R. Civ. P. 33(c) or 34 at the location where they are produced.

(2) *Copies of Documents.* Except as otherwise provided in an order entered pursuant to Fed. R. Civ. P. 26(c), upon request of any party, and upon that party's agreement to pay the copying costs at the time of delivery, a party who produces documents pursuant to Fed. R. Civ. P. 33(c) or 34 shall provide copies of all or any specified part of the documents. No party shall be entitled to obtain copies of documents produced by another party pursuant to Fed. R. Civ. P. 33(c) or 34 without paying the costs thereof.

Adopted effective October 1, 1992; amended effective January 2, 1995.

RULE 30.1 PLACE FOR TAKING DEPOSITIONS

Unless the court orders otherwise,

(a) Boston is deemed a convenient place for taking of a deposition of any person who resides, is employed, or transacts business in person in Suffolk, Bristol, Essex, Middlesex, Norfolk or Plymouth Counties;

(b) Springfield is deemed a convenient place for taking the deposition of any person who resides, is employed, or transacts business in person in Berkshire, Franklin, Hampden or Hampshire Counties; and

(c) Worcester is deemed a convenient place for taking the deposition of any person who resides, is employed, or transacts business in person in Worcester County.

Effective September 1, 1990; amended effective March 6, 2007.

RULE 30.2 OPENING OF DEPOSITIONS

(a) If filed, unless the court directs otherwise, depositions taken pursuant to Rule 26, Federal Rules of Civil Procedure, in a pending action shall be opened by the clerk and made available for inspection and copying on request of any party or counsel for any party to the proceeding.

(b) Depositions before action or pending appeal taken pursuant to Rule 27, Federal Rules of Civil Procedure, shall be opened by the clerk and made available for inspection and copying on request of any person served with notice pursuant to subsection (a)(2) of that rule, or by counsel for such person.

Effective September 1, 1990.

RULE 33.1 INTERROGATORIES

(a) Form of Response.

(1) Answers and objections in response to interrogatories, served pursuant to Fed. R. Civ. P. 33 shall be made in the order of the interrogatories propounded.

(2) Each answer, statement, or objection shall be preceded by the interrogatory to which it responds.

(3) Each objection and the grounds therefor shall be stated separately.

(b) Reference to Records. Whenever a party answers any interrogatory by reference to records from which the answer may be derived or ascertained, as permitted in Federal Rule of Civil Procedure 33(c):

(1) the specification of documents to be produced shall be in sufficient detail to permit the interrogating party to locate and identify the records and to ascertain the answer as readily as could the party from whom discovery is sought;

(2) the producing party shall make available any computerized information or summaries thereof that it either has, or can adduce by a relatively simple procedure, unless these materials are privileged or otherwise immune from discovery;

(3) the producing party shall provide any relevant compilations, abstracts, or summaries in its custody or readily obtainable by it, unless these materials are privileged or otherwise immune from discovery; and

(4) the documents shall be made available for inspection and copying within fourteen (14) days after service of the answers to interrogatories or at a date agreed upon by the parties.

(c) Objections to Interrogatories.

(1) When an objection is made to any interrogatory, or subpart thereof, it shall state with specificity all grounds upon which the objecting party relies. Any ground not stated in an objection within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, shall be deemed waived.

(2) No part of an interrogatory shall be left unanswered merely because an objection is interposed to another part of the interrogatory.

(d) Answers to Interrogatories Following Objections. Answers to interrogatories with respect to which objections were served and which are subsequently required to be answered shall be served within fourteen (14) days after it is determined that they should be answered, unless the court directs otherwise.

(e) Claims of Privilege. When a claim of privilege is asserted in objection to any interrogatory, or any subpart thereof, and an answer is not provided on the basis of that assertion, the attorney asserting the privilege shall identify in the objection the nature of the privilege that is being claimed. If the privilege is being asserted in connection with a claim or defense governed by state law, the attorney asserting the privilege shall indicate the particular privilege rule that is being invoked.

Adopted effective October 1, 1992; amended effective January 2, 1995.

RULE 34.1 DOCUMENT PRODUCTION

(a) Form of Response.

(1) Answers and objections in response to requests for document production, served pursuant to Fed. R. Civ. P. 34 shall be made in the order of the requests propounded.
(2) Each answer, statement, or objection shall be preceded by the request to which it responds.
(3) Each objection and the grounds therefor shall be stated separately.

(b) [Reserved].

(c) Objections to Document Request.

(1) When an objection is made to any document request, or subpart thereof, it shall state with specificity all grounds upon which the objecting party relies. Any ground not stated in an objection within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, shall be deemed waived.

(2) No part of a document request shall be left unanswered merely because an objection is interposed to another part of the document request.

(d) Answers to Document Request Following Objections. Answers to a document request with respect to which objections were served and which are subsequently required to be answered shall be served within fourteen (14) days after it is determined that they should be answered, unless the court directs otherwise.

(e) Claims of Privilege. When a claim of privilege is asserted in objection to any document request, or any subpart thereof, and any document is not provided on the basis of that assertion, the attorney asserting the privilege shall identify in the objection the nature of the privilege that is being claimed with respect to each such document. If the privilege is being asserted in connection with a claim or defense governed by state law, the attorney asserting the privilege shall indicate the particular privilege rule that is being invoked.

Adopted effective October 1, 1992; amended effective January 2, 1995.

RULE 35.1 DISCLOSURE OF MEDICAL INFORMATION IN PERSONAL INJURY CASES

(a) Disclosure by Claimants. Fourteen (14) days after an issue is joined by a responsive pleading, a claimant, whether plaintiff, third-party plaintiff, cross-claimant, or counter-claimant, who asserts a claim for personal injuries shall serve defendant, whether the direct defendant, third-party defendant, cross-claim defendant, or counterclaim defendant with

(1) an itemization of all medical expenses incurred before the date of service of the pleading containing the claim for which recovery is sought. If the claimant anticipates that recovery will be sought for future medical expenses, the itemization shall so state, but need not set forth an amount for the anticipated future medical expenses;

(2) a statement that either:

> (a) identifies a reasonably convenient location and date, within no more than fourteen (14) days, at which the defendant may inspect and copy, at the defendant's expense, all non-privileged medical records pertaining to the diagnosis, care, or treatment of injuries for which recovery is sought; or
>
> (b) identifies all health care providers from which the claimant has received diagnosis, care, or treatment of injuries for which recovery is sought together with executed releases directed at each provider authorizing disclosure to the defendant or its counsel of all non-privileged medical records in the provider's possession.

(b) Assertion of Privilege. Insofar as medical records are not produced in accordance with subdivision (a)(2) on the ground of privilege, the claimant shall identify the privileged documents and state the privilege pursuant to which they are withheld.

(c) Removed and Transferred Actions. In all actions removed to this court from a state court or transferred to this court from another federal court, claimants seeking recovery for personal injuries shall provide the information and materials described in subdivision (a) within 21 days after the date of removal or transfer.

Adopted effective October 1, 1992; amended effective December 1, 2009.

RULE 36.1 ADMISSIONS

(a) Requests for Admission--Form of Response.

(1) Statements and objections in response to requests for admission served pursuant to Fed. R. Civ. P. 36 shall be made in the order of the requests for admission propounded.

(2) Each answer, statement, or objection shall be preceded by the request for admission to which it responds.

(3) Each objection and the grounds therefor shall be stated separately.

(b) Statements in Response to Requests for Admission Following Objections. When there is objection to a request for admission and it is subsequently determined that the request is proper, the matter, the admission of which is requested, shall be deemed admitted unless within 14 days after such determination such party to whom the request was directed serves a statement denying the matter or setting forth the reasons why that party cannot admit or deny the matter, as provided in Fed. R. Civ. P. 36.

Adopted effective October 1, 1992; amended effective January 2, 1995; December 1, 2009.

RULE 37.1 DISCOVERY DISPUTES

(a) Before filing any discovery motion, including any motion for sanctions or for a protective order, counsel for each of the parties shall confer in good faith to narrow the areas of disagreement to the greatest possible extent. It shall be the responsibility of counsel for the moving party to arrange for the conference. Conferences may be conducted over the telephone. Failure of opposing counsel to respond to a request for a discovery conference within seven (7) days of the request shall be grounds for sanctions, which may include automatic allowance of the motion.

(b) If (I) opposing counsel has failed to respond to a request for a discovery conference within the seven day period set forth in subdivision (a), (II) opposing counsel has failed to attend a discovery conference within fourteen (14) calendar days of the request, or (III) if disputed issues are not resolved at the discovery conference, a dissatisfied party may file a motion and supporting memorandum. The motion shall include a certificate in the margin of the last page that the provisions of this rule have been complied with. The memorandum shall state with particularity the following:

(1) If a discovery conference was not held, the reasons why it was not;

(2) If a discovery conference was held, the time, date, location and duration of the conference; who was present for each party; the matters on which the parties reached agreement; and the issues remaining to be decided by the court;

(3) The nature of the case and the facts relevant to the discovery matters to be decided;

(4) Each interrogatory, deposition question, request for production, request for admission or other discovery matter raising an issue to be decided by the court, and the response thereto; and

(5) A statement of the moving party's position as to each contested issue, with supporting legal authority, which statement shall be set forth separately immediately following each contested item.

(c) The opposing party may respond to the memorandum within fourteen (14) calendar days after service thereof. The response, if any, shall conform to the requirements of subdivision (b)(5) of this Rule.

Adopted effective October 1, 1992.

RULE 40.1 ASSIGNMENT OF CASES

(A) Civil Cases.

(1) *Categories of Cases.* All civil cases shall be divided into the following three categories for purposes of assignment, based upon the numbered Nature of the Suit listed in the civil cover sheet used by the clerk in initiating the civil docket:

I 410, 441, 470, 535, 830, 891, 893, 895, R.23, regardless of nature of suit.
II 110, 130, 140, 160, 190, 196, 230, 240, 290, 320, 362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820, 840, 850
III 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 560, 625, 690, 751, 791, 810, 861-865, 890, 896, 899, 950

A copy of the local civil category sheet form referred to is attached as an appendix to this rule.

(2) *Designation of Nature of Suit.* The party filing the initial pleading shall complete a civil cover sheet, Form JS 44, or any successor forms, and file it with the initial pleading. If the clerk should determine that the designation of Nature of Suit is in error, the clerk shall correctly classify the suit and notify the party filing the initial pleading. A designation shall not thereafter be changed except by order of the Chief Judge or the judge to whom the case is assigned.

(3) *Assignment.* The clerk shall place a case in one of the three categories described in subsection (A)(1) and, unless otherwise ordered by the Court, assign it by lot among the judges of the court in active service at their respective duty stations in accordance with this rule in such manner that each such judge shall be assigned as nearly as possible the same number of cases in each category. A senior judge may limit the category of case and nature of suit assigned to that judge and, within the categories of cases or suits that senior judge will accept, assignment shall be by lot in accordance with this rule.

(B) Criminal Cases.

(1) *Categories of Cases.* All criminal cases shall be divided into the following three categories:

I - Felony cases expected to require a combined total of fifteen (15) days or more for pretrial hearings and trial before a district judge.
II - All other felony cases.
III - All misdemeanor and petty offense cases where a district judge has been requested; all Rule 20 cases; cases involving waivers of indictment; and all matters involving alleged violations of conditions of release by persons transferred to this District for supervision.

(2) *Designation of Category*. The attorney for the United States shall identify the appropriate category on Form JS 45, as modified for the District of Massachusetts, or any successor form, and submit the form contemporaneously with the document that initiates the case. If the clerk should determine that the designation of category is in error, the clerk shall correctly classify the case and notify the attorney for the United States. The designation shall not thereafter be changed except by order of the Chief Judge or the judge to whom the case is assigned.

(3) *Assignment.* The clerk shall place a case in one of the three categories described in subsection (B)(1) and, unless otherwise ordered by the Court, assign it by lot among the judges of the court in active service at their respective active duty stations within the divisions of the court in accordance with this rule in such manner that each judge shall be assigned as nearly as possible the same number of cases in each category. A senior judge may limit the category of cases or types of alleged criminal offenses assigned to that judge and within the categories of cases or offenses that senior judge will accept, assignment shall be in accordance with this rule.

(C) Designation of Divisions.

The District of Massachusetts constitutes one judicial district comprising three divisions.

(1) *Eastern Division*. The Eastern Division of the District of Massachusetts comprises the counties of Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, and Suffolk. Cases assigned to the Eastern Division and all pleadings and documents therein shall be filed in the clerk's office in Boston.

(2) *Central Division*. The Central Division of the District of Massachusetts is Worcester County. Cases assigned to the Central Division and all pleadings and documents therein shall be filed in the clerk's office in Worcester.

(3) *Western Division*. The Western Division of the District of Massachusetts comprises the counties of Berkshire, Franklin, Hampden and Hampshire. Cases shall be assigned to the Western Division and all pleadings and documents therein shall be filed at the clerk's office in Springfield.

(D) Assignment of Civil Cases.

(1) Civil cases shall be assigned to the respective divisions if:

(a) All of the parties reside in that division.
(b) All of the parties reside in the District of Massachusetts and the majority of the plaintiff(s) reside(s) in that division.
(c) The only parties residing in the District of Massachusetts reside in that division; or
(d) Any of the parties are the United States, the Commonwealth of Massachusetts, or any governmental agency of either the United States or the Commonwealth of Massachusetts and a majority of all other parties resident in the District of Massachusetts reside in that division.

(2) Except as otherwise ordered by the Court, cases not governed by section (D)(1) may be filed, subject to reassignment and transfer, in the division chosen by the plaintiff.

(E) Assignment of Criminal Cases.

Criminal cases shall be assigned to that division in which the most significant criminal conduct related to the alleged violations occurred within the District of Massachusetts. All documents in each criminal case shall be filed in the clerk's office administering cases for the division to which that case is assigned.

(F) Transfer between Divisions.

Any case may be transferred from one division to another division on motion of any party for good cause shown or sua sponte for good cause by the judge to whom the case is assigned.

(G) Related Civil Cases.

(1) For purposes of this rule, a civil case is related to one previously filed in this court if some or all of the parties are the same and if one or more of the following similarities exist also: the cases involve the same or similar claims or defenses; or the cases involve the same property, transaction or event; or the cases involve insurance coverage for the same property, transaction or event; or the cases involve substantially the same questions of fact and law. In addition, two cases, one criminal and one civil, are related if the civil case involves forfeiture of property from a transaction or event which is the subject of a previously filed criminal case, or the civil case seeks enforcement of a restitution order or fine imposed in a previously filed criminal case. This rule shall not apply if more than two (2) years have elapsed since the closing of the previous action.

(2) If the party filing the initial pleading believes that the case is related to a case already assigned, whether or not the case is then pending, that party shall notify the clerk by notation on the local civil category sheet indicating the title and number of each such earlier case.

(3) The clerk shall assign related cases to the same judge without regard to the number of other cases in that category previously assigned to that judge. Related cases shall be counted as cases assigned, except as the Chief Judge may otherwise direct.

(4) The assignment of cases as related by the clerk shall be subject to correction only by the judge to whom they have been assigned, who shall return cases erroneously assigned on that basis to the clerk for reassignment.

(5) The treatment of a case as not related to another case shall be subject to correction only by the joint decision of the judge to whom it has been assigned and the judge to whom it should be assigned, if related to another case. The judges may then transfer the case pursuant to section (I) of this rule, and shall notify the clerk of the reason for the transfer.

(H) Proceedings after Assignment.

Unless otherwise ordered by the court, all proceedings in a case after its assignment shall be conducted before the judge to whom it has been assigned, except as otherwise provided in these rules. This section does not preclude reassignment of cases by the court or the clerk, at the direction of the court, without prior notice to the parties.

(I) Reassignment and Transfer of Cases.

In the interest of justice or to further the efficient performance of the business of the court, a judge may return a case to the clerk for reassignment, whether or not the case is related to any other case, with the approval of the Chief Judge, or, with respect to civil cases only, may transfer the case to another judge, if the other judge consents to the transfer.

(J) Motion for Consolidation of Cases.

A motion for consolidation of two or more cases shall be made in the case first filed in this court.

(K) Proceedings after Appeal.

(1) When an appellate court remands a case to this court for a new trial, the case shall be reassigned to a judge other than the judge before whom the first trial was held.

(2) In all other cases in which the mandate of the appellate court requires further proceedings in this court, such proceedings shall not be conducted before the judge before whom the prior proceedings were conducted unless the terms of the remand require that further proceedings be conducted before the original judge or unless the judge determines that there will result a substantial saving in the time of the whole court and that there is no reason why, in the interest of justice, further proceedings should be conducted before another judge. If the judge before whom the prior proceedings were conducted does not retain the case for further proceedings, that judge shall return it to the clerk for reassignment.

Effective September 1, 1990; amended effective January 1, 2001; August 2, 2011; January 3, 2012.

RULE 40.2 CONFLICT OF COURT APPEARANCES

(a) Order of Preference and Notice to Clerks. In situations where counsel, including Assistant United States Attorneys, have conflicting court appearances among cases pending before different judges or magistrates of this court, the following order of preference shall apply, except as otherwise provided by law:

(1) Trials shall take precedence over all other hearings, and jury trials shall take precedence over nonjury trials.

(2) Criminal cases shall take precedence over civil cases.

(3) Criminal cases involving defendants who are in custody pending trial in the particular case shall take precedence over other criminal cases.

(4) Among civil cases or among criminal cases not involving defendants in custody, the case having the earliest docket number shall take precedence over the others.

When such conflicts appear, the counsel involved shall notify the deputy clerk assigned to each judge concerned, in writing, not later than seven (7) days after the receipt of the notice or calendar giving rise to such conflict. The notice shall contain the names and docket number of each case, the time of the scheduled hearings in each case, the purpose thereof, and advise which case has precedence and the reason therefor. Upon receipt of such notice and a determination that a conflict in fact exists, the case or cases not having precedence shall be rescheduled.

(b) Substitution of Counsel. Counsel, in lieu of giving a notice of conflict, may elect to have a colleague, including another Assistant United States Attorney, handle the matter for the counsel involved. This shall not apply to any appointed defense counsel in the trial of criminal cases, unless the judicial officer orders otherwise.

(c) Primacy of Speedy Trial Plan. In the event of any conflict between the provisions of this rule and the provisions of the Speedy Trial Plan for the District of Massachusetts, the Speedy Trial Plan shall control.

(d) Scheduling Policy Regarding Superior Court Cases. When counsel have engagement conflicts with respect to cases pending in the Massachusetts Superior Court and The United States District Court for the District of Massachusetts, the following scheduling policy shall apply:

(1) Trials shall take precedence over all other hearings.

(2) Jury trials shall take precedence over nonjury trials.

(3) Criminal cases shall take precedence over civil cases.56

(4) Criminal cases involving defendants who are in custody pending trial shall take precedence over other criminal cases.

(5) Among civil cases, or among criminal cases not involving defendants in custody, the case having the earliest docket number shall take precedence over the others, except that a trial setting involving numerous parties and counsel will ordinarily take precedence over other trials.

Counsel shall notify the presiding Superior Court Justice and U.S. District Judge of the scheduling conflict, in writing, not later than seven (7) days after the receipt of the scheduling order giving rise to the conflict. Counsel's notification shall include: a) the names and docket numbers of each case, b) the date and time of the scheduled proceedings in each case, and c) a brief statement as to which case has precedence under this policy. The case or cases not having precedence shall be rescheduled, unless the presiding Justice and Judge agree otherwise. In the event of any conflict between the provisions of this policy and the provisions of the Speedy Trial Plan for the District of Massachusetts, the Speedy Trial Plan shall have precedence.

Effective September 1, 1990; amended effective January 2, 1995; December 1, 2009.

RULE 40.3 CONTINUANCES

(a) A motion for the continuance of a trial, evidentiary hearing, or any other proceeding, will be granted only for good cause.

(b) Motions to continue discovery and pretrial conferences will not be entertained unless the date and time of the pretrial conference are set out in the motion as well as a statement of how many other requests, if any, for continuances have been sought and granted.

(c) Illness of parties and material witnesses shall be substantiated by a current medical certificate.

(d) The judicial officer may condition a continuance upon the payment of expenses caused to the other parties and of jury fees incurred by the court.

Effective September 1, 1990; amended effective October 1, 1992.

RULE 40.4 EMERGENCIES AND SPECIAL PROCEEDINGS

(a) Matters and Proceedings Heard by Miscellaneous Business Docket (MBD) Judge. There will be designated an MBD judge to hear and determine:

(1) Emergency matters requiring immediate action in cases already assigned to any judge of the court, if the judge to whom a case had been assigned is unavailable or otherwise unable to hear the matter.

(2) Special proceedings, the nature of which precludes their assignment in the ordinary course, e.g., motions relating to grand jury investigations, discovery in cases pending in other districts, enforcement of administrative subpoenas; and

(3) Any other proceedings, including an admission to the bar and a naturalization, which are not part of or related to a case that should be assigned in the ordinary course.

(b) Disposition of "Emergency" Matters. The MBD judge will dispose of matters pursuant to subsection (a)(1), only to the extent necessary to meet the emergency. So far as practicable, consistent with justice and the efficient performance of the business of the court, the matter will be continued for disposition by the judge to whom the case is assigned.

(c) Subsequent "Emergency" Proceedings. If the MBD judge before whom the proceeding is brought concludes that, for lack of an emergency or otherwise, the proceeding should not be determined under this rule, the party who brought the proceeding shall not thereafter present the same matter to any other judge sitting as MBD judge, unless relevant circumstances change in the interim, in which case he shall bring to the attention of such other judge the prior proceeding and the changed circumstances which warrant resubmission of the matter under this rule.

(d) Special and Other Proceedings. Proceedings pursuant to subsections (a)(2) and (3) shall continue before the judge first handling the matter until conclusion.

Effective September 1, 1990.

RULE 41.1 DISMISSAL FOR WANT OF PROSECUTION

(a)(1) Whenever in any civil action the clerk shall ascertain that no proceeding has been docketed therein for a period of one (1) year, he shall then mail notice to all persons who have entered an appearance in such a case that, subject to the provisions of subsection (a)(3), the case will be dismissed without further notice 28 days after the sending of the notice.

(2) After the 28th day following the sending of the notice, without order of the court the clerk shall, subject to the provisions of subsection (a)(3), enter an order of dismissal for all cases on the list. It shall not be necessary for the clerk to send additional notice of the dismissal to any counsel or party.

(3) A case shall not be dismissed for lack of prosecution if within 28 days of the sending of notice an explanation for the lack of proceedings is filed and the judge to whom the case is assigned orders that it not be dismissed.

(b)(1) Additionally, each judge may from time to time give notice of not less than 21 days of hearing on a dismissal calendar for actions or proceedings assigned to that judge that appear not to have been diligently prosecuted. Unless otherwise ordered by the assigned judge, each party shall, not less than 14 days prior to the noticed hearing date, serve and file a certificate describing the status of the action or proceeding and showing that good cause exists for the court to retain the case on the docket. Nothing in this rule precludes the filing of a motion for dismissal under Rule 41(b) of the Federal Rules of Civil Procedure.

(2) Failure on the part of the plaintiff to file the required statement or his failure to appear at the scheduled hearing shall be grounds for the dismissal of the action.

(c) The dismissal of a case pursuant to this rule shall not operate as an adjudication on the merits unless the court on motion of a party directs otherwise.

Effective September 1, 1990; amended effective December 1, 2009.

RULE 43.1 TRIAL

(a) Time Limits for Evidentiary Hearing.

(1) Absent agreement of the parties as to the time limits for the trial acceptable to the judicial officer, the judicial officer may order a presumptive limit of a specified number of hours. This time shall be allocated equally between opposing parties, or groups of aligned parties, unless otherwise ordered for good cause.

(2) A request for added time will be allowed only for good cause. In determining whether to grant a motion for an increased allotment of time, the court will take into account:

(a) whether or not the moving party has

(1) used the time since the commencement of trial in a reasonable and proper way, and

(2) complied with all orders regulating the trial;

(b) the moving party's explanation as to the way in which the requested added time would be used and why it is essential to assure a fair trial; and

(c) any other relevant and material facts the moving party may wish to present in support of the motion.

The court will be receptive to motions for reducing or increasing the alloted time to assure that the distribution is fair among the parties and adequate for developing the evidence.

(b) Evidence at the Evidentiary Hearing.

(1) Each party shall give advance notice to the judicial officer and the other parties, before jury selection, of the identity of all witnesses whose testimony it may offer during trial, whether by affidavit, deposition, or oral testimony.

(2) Not later than seven (7) days before it seeks to use the testimony of any witness, or on shorter notice for good cause shown, a party shall advise the judicial officer and all other parties of its intent to use the testimony of the witness on a specified day.

(3) Except for good cause shown, no party shall be allowed to:

(a) use the testimony of a witness other than the witnesses already listed on the filing with the court before trial commences; or

(b) introduce documentary evidence, during direct examination, other than those exhibits already listed with the judicial officer and furnished to the other parties before trial commences.

Adopted effective October 1, 1992; amended effective December 1, 2009.

RULE 48.1 [DELETED]

Deleted effective January 2, 1995.

RULE 54.3 [DELETED]

Deleted effective January 2, 1995.

RULE 56.1 MOTIONS FOR SUMMARY JUDGMENT

Motions for summary judgment shall include a concise statement of the material facts of record as to which the moving party contends there is no genuine issue to be tried, with page references to affidavits, depositions and other documentation. Failure to include such a statement constitutes grounds for denial of the motion. Opposition to motions for summary judgment must be filed, unless the court orders otherwise, within 21 days after the motion is served. A party opposing the motion shall include a concise statement of the material facts of record as to which it is contended that there exists a genuine issue to be tried, with page references to affidavits, depositions and other documentation. Copies of all referenced documentation shall be filed as exhibits to the motion or opposition. Material facts of record set forth in the statement required to be served by the moving party will be deemed for purposes of the motion to be admitted by opposing parties unless controverted by the statement required to be served by opposing parties. Unless the court orders otherwise, the moving party may file a reply within 14 days after the response is served.

Effective September 1, 1990, amended effective December 1, 2009.

RULE 58.2 SATISFACTION OF JUDGMENTS

(a) Satisfaction of a money judgment shall be entered by the clerk without order of the court:

(1) On payment into court of the amount of the judgment including costs taxed, plus interest, and the amount of any fees due; or

(2) On the filing of a satisfaction of judgment executed by the judgment creditor, or his legal representative or assignees with evidence of their authority, or his attorney in the proceeding in which judgment has been entered; or

(3) On the filing of a satisfaction of judgment executed by the United States Attorney, if the judgment is in favor of the United States; or

(4) On registration of a certified copy of a satisfaction of judgment entered in another district court.

(b) When satisfaction is made by payment of money into court, that fact shall be noted in the entry of satisfaction.

(c) Entry of judgment shall constitute sufficient authorization for the clerk to accept payment into court.

(d) Mandate of An Appellate Court. An order or judgment of an appellate court in a case appealed from this court shall, if further proceedings are not required, become the order or judgment of this court and be entered as such on receipt of the mandate of the appellate court.

Effective September 1, 1990.

RULE 62.2 SUPERSEDEAS BOND

A supersedeas bond staying execution of a money judgment shall be in the amount of the judgment plus ten (10%) percent of the amount to cover interest and any award of damages for delay plus Five Hundred and no/100 ($500.00) Dollars to cover costs, unless the court directs otherwise.

Effective September 1, 1990.

RULE 67.1 SURETIES

(a) Members of the Bar and Court Officers. No judge, clerk, marshal, member of the bar or other officer or employee of the court may be surety or guarantor of any bond or undertaking in any proceeding in this court.

(b) Form of Bond. Surety bonds shall be signed and acknowledged by the party and his surety or sureties. They shall refer to the statute, rule, or court order under which given, state the conditions of the obligation, and contain a provision expressly subjecting them to all applicable federal statutes and rules.

(c) Security. Except as otherwise provided by law or by order of the court, a bond or similar undertaking must be secured by:

(1) The deposit of cash or obligations of the United States in the amount of the bond (note Rule 67.4 with regard to the court's cash policy); or

(2) The guaranty of a company or corporation holding a certificate of authority from the Secretary of the Treasury pursuant to 6 U.S.C. § 8; or

(3) The guaranty of two (2) individual residents of this district each of whom owns unencumbered real or personal property within the district worth the amount of the bond, in excess of legal obligations and exemptions.

(d) Deposits of cash or obligations of the United States shall be accompanied by a written statement, duly acknowledged, that the signer is owner thereof, that the same is subject to the conditions of the bond, and that the clerk may collect or sell the obligations and apply the proceeds, or the cash deposited, in case of default as provided in the bond. Upon satisfaction of the conditions of the bond, the monies or obligations shall be returned to the owner on the order of a magistrate or district judge.

(e) Individual Sureties. An individual acting as surety, pursuant to subsection (c)(3), shall file an affidavit:

(1) Giving his name, occupation, and residential and business address;

(2) Showing that he is qualified to act as surety; and

(3) [In criminal cases] stating that he will not encumber or dispose of the property on which his qualification as surety depends while the bond remains in effect.

(f) Approval of Bond. Except as otherwise provided by law, the Clerk of Court may approve a bond in the amount fixed by the court or by statute or rule, and secured in the manner provided by subsections (c)(1) or (2). All other bonds must be approved by the court.

(g) Service. The party on whose behalf a bond is given shall promptly, after approval and filing of the bond, serve a copy of it on all other parties to the proceeding, but such service need not be made on the United States in a criminal case.

(h) Modification of Bond. The amount or terms of a bond or similar undertaking may be changed at any time as justice requires, by order of the court on its own motion or on motion of a party.

(i) Further Security. The court may order a party to furnish further or different security, or require personal sureties to furnish further justification.

Effective September 1, 1990.

RULE 67.2 DEPOSIT IN COURT

The following procedures apply to deposits into the registry of the Court in civil actions.

(a) Receipt of Funds.

(1) No money may be sent to the Court or its officers for deposit into the Court's registry without a Court order by the presiding judge in the case or proceeding.

(2) All money ordered to be paid to the Court or received by its officers in any case pending or adjudicated shall be deposited with the Treasurer of the United States in the name and to the credit of this Court pursuant to 28 U.S. C. § 2041 through depositories designated by the Treasury to accept such deposit on its behalf.

(3) The party making the deposit or transferring funds to the Court's registry shall serve the order permitting the deposit or transfer on the Clerk of Court.

(b) Investment of Registry Funds.

(1) Funds on deposit with the Court will be placed in interest-bearing instruments in the Court Registry Investment System (CRIS) administered by the Administrative Office the United States Courts which is the only investment mechanism authorized.

(2) Under CRIS, monies deposited in each case under Local Civil Rule 67.2(a) shall be "pooled" together with those on deposit with the Treasury to the credit of other courts in CRIS and used to purchase Government Account Series securities through the Bureau of Public Debt, which will be held at Treasury, in an account in the name and to the credit of the Direct of Administrative Office of the United States Courts, hereby designated custodian for the Court Registry Investment System.

(3) An account for each case will be established in CRIS titled in the name of the case giving rise to the investment in the fund. Income generated from fund investments will be distributed to each case based on the ratio each account's principal and earnings has to the aggregate principal and income total in the fund. Reports showing the interest earned and the principal amounts contributed in each case will be prepared and distributed to each court participating in CRIS and made available to litigants and/or their counsel.

(c) Deductions of Fees.

(1) The custodian is authorized and directed by this Local Civil Rule to deduct the registry fee for maintaining accounts in CRIS and the investment service fee for the management of investments. The proper registry fee is to be determined on the basis of the rates published by the Director of the Administrative Office of the United States as approved by the Judicial Conference. The investment services fee is assessed from interest earning according to the Court's Miscellaneous Fee Schedule.

(2) If registry fees were assessed against the case under the old 45-day requirement prior to deposit in CRIS, no additional registry fee will be assessed.

Effective September 1, 1990; amended effective October 3, 2005; June 7, 2011.

RULE 67.3 DISBURSEMENT OF REGISTRY FUNDS

The clerk shall not distribute any registry funds without an order of a district judge of this court. All orders for distribution, unless prepared by a deputy clerk assigned to the financial section of the clerk's office, must be approved by the clerk before presentation to a district judge.

All checks drawn by the Clerk of Court on deposits made in the registry of the court shall be made payable to the order of the payee(s) as the name(s) thereof appear in the orders of this court providing for distribution.

Disbursement from the registry of the court shall be made in accordance with the terms and at the time provided in the order for disbursement, or immediately upon receipt of the order if no time is specified, except in cases where it is necessary to allow time for a check or draft to clear. Prior to distribution, any party claiming an interest in the funds may move the court for a stay of the disbursement order pending appeal.

(a) Payees. If more than one check is to be issued on a single order, the portion due to each payee must be set out separately. In all cases, counsel must furnish the clerk with the address and social security number or taxpayer identification number of each recipient, and this number shall be included in the court order for release of funds.

(b) Disbursement of Monies other than Registry Funds. All disbursements to individuals made by the clerk of this court of monies received in his official capacity, other than registry funds, when made by check of the clerk on the Treasury of the United States, shall be made to the payee as the name shall appear in the disbursement voucher certified by the clerk or his designated certifying officer. The name of the payee in the disbursement voucher shall conform to the name appearing in the clerk's records of the case to which the disbursement relates. The clerk shall endeavor to note of record the given name of all individuals making deposits of monies with the clerk, and in those cases where the given name appears of record, disbursement vouchers and checks thereunder shall show the full given name, additional initials, if any, and the surname of the payee.

(c) Escrow Agents. In lieu of these provisions, an interested party may apply to the court for appointment of escrow agents. Such agents may deposit funds in a financial institution in an interest-bearing account and provide for the disposition of interest so earned, as approved by the court.

Effective September 1, 1990.

RULE 67.4 PAYMENTS AND DEPOSITS MADE WITH THE CLERK

(a) The clerk will not routinely accept payments or deposits in cash; but the court, on motion of any party, may order that the clerk accept cash in a particular instance.

(b) All checks must be made payable to "Clerk, United States District Court." The clerk is authorized to refuse any check not so made payable.

(c) The clerk may, in his discretion, require any payment to be made by certified check or its equivalent. The clerk shall require payment of bail to be made by certified check or its equivalent, unless otherwise ordered by the court.

(d) When electronically filing any pleading or paper through CM/ECF that requires a fee, all registered ECF users are to pay the fee electronically through the Treasury Department's Internet payment process (pay.gov). *Pro se* filers and those who have been exempted from electronic filing and/or electronic payment of fees may submit payments by check or money order made payable to "Clerk, U.S. District Court".

Effective September 1, 1990; amended effective January 1, 2009.

RULE 68.2 SETTLEMENT

When a case is settled, the parties shall file in the office of the clerk a signed agreement for judgment or stipulation for dismissal, as appropriate, within 28 days, unless the court otherwise orders.

Effective September 1, 1990; amended effective December 1, 2009.

RULE 77.1 SITTINGS

(a) The court shall be in continuous session for transacting judicial business on all business days throughout the year at Boston, Worcester and Springfield.

(b) Any judge of the court may, in the interest of justice or to further efficient performance of the business of the court, conduct proceedings at a special session at any time, anywhere in the district, on request of a party or otherwise.

Effective September 1, 1990; amended effective January 1, 2001.

RULE 77.2 OFFICE OF THE CLERK

The offices of the Clerk of Court at Boston, Worcester and Springfield shall be open from 8:30 a.m. until 5:00 p.m. on all days except Saturdays, Sundays, legal holidays and other days so ordered by the court and announced in advance, if feasible.

Effective September 1, 1990.

RULE 79.1 EXHIBITS

(a) Custody. Unless otherwise ordered by the court, all exhibits marked in evidence or for identification shall remain in the custody of the party that introduced them. Exhibits shall be preserved in the form in which they were offered until the proceeding is finally concluded. The party having custody shall make the exhibits available to all parties.

(b) Any party may move the court for custody arrangements that differ from those in section (a) upon a showing of good cause. The court may, on its own motion, provide for different custody arrangements or modify existing arrangements at any time.

(c) A court order that the clerk take custody of any exhibit shall specify the period during which the clerk shall maintain custody, the party to whom the exhibit shall be returned at the end of the period, and provision for destruction by the clerk without further notice to the parties at a set time after expiration of the custody period, if the party to whom the exhibit is to be returned fails to remove it from the custody of the clerk. Such court order shall constitute the only notice required for the purpose of exhibit disposal.

(d) It shall be sufficient if orders under the above sections are in writing, signed by the court or the clerk at the direction of the court, or are entered orally on the record and the substance of the order is reproduced on the docket sheet.

(e) Photographs of Chalks. In order to make a record of a chalk, the court may permit a party to photograph it or otherwise copy it, on such terms as are just. Unless otherwise ordered by the court, in jury cases chalks may be destroyed by the clerk as soon as the jury verdict has been recorded; in nonjury cases, chalks may be destroyed as soon as the evidence is closed.

Effective September 1, 1990.

RULE 81.1 REMOVAL

(a) Within 28 days after filing a notice for removal of an action from a state court to this court pursuant to 28 U.S.C. § 1446, the party filing the notice shall file certified or attested copies of all records and proceedings in the state court and a certified or attested copy of all docket entries in the state court.

(b) If the clerk of this court has not received the papers required to be filed under section (a) within 42 days of the filing of the notice for removal, the case shall be remanded to the state court from which it was removed, unless this court directs otherwise.

(c) When a case is remanded to a state court, the clerk shall mail certified copies of the docket and order of remand, together with the remainder of the original file, to the clerk of the state court.

Effective September 1, 1990; amended effective December 1, 2009.

RULE 81.2 DEFINITION OF JUDICIAL OFFICER

As used in these rules, "judicial officer" refers to either a United States District Court Judge or a United States Magistrate Judge. For purposes of LR 83.6(5)(A), the term "judicial officer" also refers to a United States Bankruptcy Judge.

Adopted effective October 1, 1992; amended effective August 1, 1997.

RULE 83.1A PROCEDURE FOR ADOPTING, RESCINDING AND AMENDING RULES

(a) These rules may be amended or rescinded by a majority of the active judges of this court.

(b) The clerk will maintain in suitable form an updated master copy of the rules.

Effective September 1, 1990; rescinded March 2, 2010.

RULE 83.1B GENERAL ORDER DOCKET

(a) Effective upon the adoption of these local rules, the clerk shall establish and maintain one (1) general order docket for each calendar year.

(b) All rules, administrative orders or directives of the court and amendments thereto shall bear a general order number assigned by the clerk, and be entered on the general order docket.

(c) The clerk shall place all prior administrative orders and directives, if they remain in effect at the time of adoption of these rules, on the general order docket for the year in which these rules are adopted.

(d) Any judge of this court may enter standing orders for his session, and may direct the clerk to maintain a docket therefor in accordance with sections (a) through (c).

Effective September 1, 1990.

RULE 83.2A RELEASE OF INFORMATION BY ATTORNEYS

No lawyer or law firm shall release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which he or the firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement, which a reasonable person would expect to be disseminated by means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement, which a reasonable person would expect to be disseminated by means of public communication, relating to that matter and concerning:

(1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his apprehension or to warn the public of any dangers he may present;

(2) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(5) The possibility of a plea of guilty to the offense charged or a lesser offense; and

(6) Any opinion as to the accused's guilt or innocence as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of his or its official or professional obligations, from announcing

the facts and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him.

During the trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial which a reasonable person would expect to be disseminated by means of public communication, except that the lawyer or law firm may quote from or refer without comment to public records of the court in the case.

After the completion of a trial or disposition without trial of any criminal matter, and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will affect the imposition of sentence.

Nothing in this rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him.

A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial and which relates to:

(1) Evidence regarding the occurrence or transaction involved;

(2) The character, credibility, or criminal record of a party, witness, or prospective witness;

(3) The performance or results of any examination or tests or the refusal or failure of a party to submit to such;

(4) His opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule;

(5) Any other matter reasonably likely to interfere with a fair trial of the action.

Effective September 1, 1990.

RULE 83.2B SPECIAL ORDERS FOR THE PROTECTION OF THE ACCUSED OR THE LITIGANTS IN WIDELY PUBLICIZED OR SENSATIONAL CRIMINAL OR CIVIL CASES

In a widely publicized or sensational criminal or civil case, the court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused or the litigants to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the court may deem appropriate for inclusion in such an order.

Effective September 1, 1990.

RULE 83.3 PHOTOGRAPHING, RECORDING AND BROADCASTING

(a) Photographing, Recording, and Broadcasting Generally Prohibited. Except as specifically provided in these rules or by order of the court, no person shall take any photograph, make any recording, or make any broadcast by any means, in the course of or in connection with any proceedings in this court, on any floor of any building on which proceedings of this court are or, in the regular course of the business of the court, may be held.

(b) Exceptions.

(1) Court Reporters. Official court reporters are not prohibited from making voice recordings for the sole purpose of discharging their official duties. No recording made for that purpose shall be used for any other purpose by any person.

(2) Presentation of Evidence. The court may permit the use of electronic or photographic means for the preservation of evidence or the perpetuation of a record.

(3) Miscellaneous Proceedings. The court may permit the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings.

(4) File Review. The use of dictation equipment is permitted in the clerk's office by persons reviewing files in that office.

Effective September 1, 1990; amended effective September 6, 2011.

RULE 83.3.1 RULE GOVERNING THE PILOT PROGRAM ON PHOTOGRAPHING, RECORDING AND BROADCASTING CIVIL PROCEEDINGS IN THE COURTROOM [EXPIRED JUNE 30, 1994]

(A) General Provisions.

(1) This rule applies to all civil proceedings in any session of the United States District Court and the Bankruptcy Court of the District of Massachusetts. The term "presiding judicial officer" applies to the judicial officer presiding in any such session.

(2) Reasonable advance notice is required from the media of a request to be present to broadcast, televise, record electronically, or take photographs at a particular session. Where possible, such notice should be given prior to the end of the preceding business day, but in no event later than one hour prior to the commencement of the proceedings. In the absence of such notice, the presiding judicial officer may refuse to permit media coverage. The presiding judicial officer may also waive such notice requirement.

(3) A presiding judicial officer may refuse, limit, or terminate media coverage of an entire case, portions thereof, or testimony of particular witnesses, in the interests of justice to protect the rights of the parties, witnesses, and the dignity of the court; to assure the orderly conduct of the proceedings; or for any other reason considered necessary or appropriate by the presiding judicial officer.

(4) No direct public expense is to be incurred for equipment, wiring, or personnel needed to provide media coverage.

(5) Nothing in this rule shall prevent the court from placing additional restrictions, or prohibiting altogether, photographing, recording, or broadcasting in designated areas of the courthouse. The provisions of this experimental rule pertain only to photographing, recording, and broadcasting in the courtroom. In all other areas of the courthouse, the provisions of Local Rule 83.3 remain in full force and effect.

(6) This rule takes effect July 1, 1991, and expires June 30, 1994.

(B) Limitations.

(1) Coverage of criminal proceedings is prohibited.

(2) There shall be no audio pickup or broadcast of conferences which occur in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding judicial officer, at the bench or in chambers.

(3) No coverage of the jury, or of any juror or alternate juror, while in the jury box, in the courtroom, in the jury deliberation room, or during recess, or while going to or from the deliberation room at any time, shall be permitted. Coverage of the prospective jury during voir dire is also prohibited.

(C) Equipment and Personnel.

(1) Not more than one television camera, operated by not more than one camera person and related equipment at any one time, shall be permitted in any court proceeding.

(2) Not more than one still photographer, utilizing not more than one camera and related equipment at any one time, shall be permitted in any court proceeding. More than one camera may be brought into the courtroom, provided that only one camera may be used at any one time.

(3) If two or more media representatives apply to cover a proceeding, no such coverage may begin until all such representatives have agreed upon a pooling arrangement for their respective news media. Such pooling arrangements shall include the designation of pool operators, procedures for cost sharing, access to and dissemination of material and selection of a pool representative if appropriate. The presiding judicial officer may not be called upon to mediate or resolve any dispute as to such arrangements.

(4) Equipment or clothing shall not bear the insignia or marking of a media agency. Camera operators shall wear appropriate business attire.

(D) Sound and Light Criteria.

(1) Equipment shall not produce distracting sound or light. Signal lights or devices to show when equipment is operating shall not be visible. Motorized drives, moving lights, flash attachments, or sudden light changes shall not be used. All equipment shall use existing light only.

(2) Except as otherwise approved by the presiding judicial officer, existing courtroom sound and light systems shall be used without modification. Audio pickup for all media purposes shall be accomplished from existing audio systems present in the court facility, or from a television camera's built-in microphone. If no technically suitable audio system exists in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of any proceeding by the presiding judicial officer.

(E) Location of Equipment and Personnel.

(1) The presiding judicial officer shall designate the location in the courtroom for the camera equipment and operators. Such location may be designated in advance of any request, and where possible, should be outside of the direct line of sight between the jury box and the witness stand.

(2) During the proceedings, operating personnel shall not move about nor shall there be placement, movement, or removal of equipment. All such activities shall take place each day before the proceeding begins, after it ends, or during a recess.

(F) Compliance.

Any media representative who fails to comply with the rule shall be subject to appropriate sanction, as determined by the presiding judicial officer.

(G) Review.

This rule shall not be construed to create any litigable rights or right to appellate review. Accordingly, a grant or denial of media coverage shall not be litigable or appealable, except as otherwise provided by law.

(H) Compliance with Rule 83.3.

Except as specifically provided in this rule, the prohibitions contained in LR 83.3 shall remain in full force and effect.

Adopted September 1, 1990; expired December 1994.

RULE 83.3.2 PARTICIPATION IN PILOT PROGRAM

Notwithstanding the general prohibition on photographing, recording, and broadcasting of district court proceedings set forth in Local Rule 83.3, the District Court may participate in the three year pilot program established by the Judicial Conference of the United States in September 2010 (JCUS-SEP 10, pp. 3-4) to study the use of cameras in district courtrooms for civil case proceedings.

Any recording and broadcasting conducted pursuant to the pilot program must comply with the program guidelines issued by the Judicial Conference Committee on Court Administration and Case Management, pursuant to the pilot program (available at www.uscourts.gov).

Adopted September 6, 2011

RULE 83.4 COURTROOM SEARCHES; COURTROOM SEATING

(a) All persons entering a courtroom are subject to search by the United States Marshal, a Deputy United States Marshal, or any other officer authorized by the court, as are all briefcases, parcels or other containers carried by persons entering a courtroom.

(b) Except by leave of the judge or magistrate presiding at a particular session of this court, only members of the bar of this court may be seated within the bar enclosure.

(c) With the exception of weapons carried by the United States Marshal, Deputy United States Marshals, or Federal Protective Officers, no weapons, other than exhibits, are permitted in any courtroom. No other person, including any federal law enforcement agent, shall bring a weapon other than an exhibit into any courtroom, except as specifically set forth below with respect to the courtrooms of the United States District Judges or United States Magistrates. No firearms intended for introduction as an exhibit may be brought into any courtroom unless it is first presented to the marshal for a safety check and the marshal reports to the clerk that the check has been completed.

Nothing in this rule shall be construed as precluding a federal law enforcement officer having custody or being in charge of the transportation of a federal prisoner from carrying a firearm in a courtroom assigned to a United States District Judge or United States Magistrate on the occasion of proceedings under Rule 5, Federal Rules of Criminal Procedure, or as precluding a duly authorized Correctional Officer of the Commonwealth of Massachusetts, entrusted with responsibility of transporting a state prisoner to proceedings before a United States Magistrate for civil or criminal proceedings where a Deputy United States Marshal is unavailable for such purpose, provided that the judge or magistrate is first advised of that fact.

Effective September 1, 1990.

RULE 83.5.1 ADMISSION TO THE DISTRICT BAR

(a) Eligibility for Admission. An attorney is eligible for admission to the bar of this district if the attorney:

(1) is a member of the bar in good standing in Massachusetts;

(2) is a member of the bar in good standing in every jurisdiction in which the attorney has been admitted to practice; and

(3) is not the subject of disciplinary proceedings pending in any jurisdiction in which the attorney is a member of the bar**.**

(b) Procedure for Admission.

(1) ***Application.*** All applicants for admission to the bar of this district must:

(A) complete, verify, and file an application for admission on an official form provided by the clerk;

(B) provide a Certificate of Good Standing from the Supreme Judicial Court of Massachusetts; and

(C) read and agree to comply with the Local Rules of the United States District Court for the District of Massachusetts.

If the applicant has previously had a *pro hac vice* admission to this court (or other admission for a limited purpose under Rule 83.5.3) revoked for misconduct, the applicant must notify the court of that fact, and describe the circumstances in detail.

(2) ***Review by Clerk.*** The clerk shall examine the application and Certificate of Good Standing to determine whether the application is in order. If the application is in order, the clerk shall place the name of the applicant on the list for the first available admission ceremony. If the clerk questions whether the documents satisfy the requirements, the clerk shall transmit the documents to the United States Attorney for review.

(3) ***Review by United States Attorney.*** The United States Attorney shall make a recommendation on the application within 21 days after transmittal of the application. If the United States Attorney recommends that the application should be granted, he or she shall return the application to the clerk with such recommendation in writing. The clerk shall place the name of the applicant on the list for the first available admission ceremony. If the United States Attorney recommends that the application should not be granted, he or she shall return the application to the clerk with written objection. The clerk may deny the

application without prejudice and send a notice of the denial to the applicant together with a copy of the objection from the United States Attorney.

(4) ***Motion to Approve after Denial.*** Any applicant denied admission may file a motion seeking to approve the application. The motion shall be served on the United States Attorney and presented to the Miscellaneous Business Docket (MBD) judge. The United States Attorney shall file any objection within 14 days of service. If the court approves the application, the clerk shall place the name of the applicant on the list for the first available admission ceremony.

(5) ***Oath or Affirmation.*** Approved applicants must make the following oath or affirmation before a district judge or magistrate judge:

> I solemnly swear (or affirm) that I shall conduct myself as a member of the bar of the United States District Court for the District of Massachusetts fairly and ethically and in accordance with the Constitution of the United States, the law of this district, and the local rules of this court.

(6) ***Registration and Fee.*** Approved applicants must also sign the register of attorneys and pay the approved attorney admission fee to the clerk.

Effective September 1, 1990; amended effective December 1, 2009, January 1, 2015.

RULE 83.5.2 APPEARANCES

(a) **Appearances Generally.** The filing of an appearance or any other pleading signed on behalf of a party constitutes an entry of appearance for that party. All pleadings shall contain the name, bar admission number, address, telephone number, and e-mail address of the attorney entering an appearance.

(b) **Appearances by Law Firms.** When a party is represented by a law firm, the appearance must include the name and the signature of at least one individual attorney. When a party is represented by more than one attorney from the same or different law firms, the attorney entering the appearance must designate the individual attorney who is authorized to receive all notices in the case. Any notice sent to an attorney so designated shall be deemed to be proper notice unless the court finds that notice was not properly sent.

(c) **Withdrawal of Appearance.** An attorney may withdraw an appearance on behalf of a party by either of the following procedures.

(1) ***Appearance of Successor Counsel.*** An attorney may file a notice of withdrawal of appearance that is either preceded or accompanied by the appearance of successor counsel; provided, however, that leave of court must be obtained if:

(A) any motion is pending in the case;

(B) a trial date has been set;

(C) an evidentiary hearing has been set; or

(D) any reports, written or oral, are due.

(2) ***Leave of Court.*** An attorney may seek leave of court to withdraw his or her appearance for good cause shown.

(d) **Notice of Withdrawal.** Any notice or motion to withdraw an appearance must be served on the party whom the attorney represents and all other parties to the case. Any objections to the withdrawal shall be filed within 14 days after service, unless the court shortens the period for good cause shown.

Effective September 1, 1990, amended effective January 1, 2015.

RULE 83.5.3 PRACTICE BY PERSONS NOT MEMBERS OF THE BAR

(a) Generally. An attorney who is not a member of the bar of this district may appear and practice in this court as set forth in this rule.

(b) Requirement of Good Standing. Except as provided in paragraph (e)(5) of this rule, no attorney may appear and practice if he or she:

(1) is not a member of the bar in good standing in every jurisdiction in which the attorney has been admitted to practice; or

(2) is the subject of disciplinary proceedings pending in any jurisdiction in which the attorney is a member of the bar.

(c) Attorneys for the United States. An attorney who is employed by the United States or any of its departments or agencies may appear and practice as an attorney for the United States, any department or agency of the United States, or any officer or employee of the United States.

(d) Federal Defenders. An attorney employed in the Federal Defender's Office in this District may appear and practice as an attorney pursuant to a court appointment or on behalf of his or her office.

(e) Procedural Requirements for Admission.

(1) ***Leave of Court Required.*** An attorney who is a member of the bar of any United States District Court or the bar of the highest court of any state may appear and practice in this court in a particular case by leave of court.

(2) ***Motion by Local Counsel.*** An application for leave to practice in this court shall be made by motion of a member of the bar of this court, who shall also file an appearance.

(3) ***Certification by Attorney.*** Any attorney seeking admission under this rule shall file a signed certification that the attorney:

(A) is a member of the bar in good standing in every jurisdiction in which the attorney has been admitted to practice;

(B) is not the subject of disciplinary proceedings pending in any jurisdiction in which the attorney is a member of the bar;

(C) has not previously had a *pro hac vice* admission to this court (or other admission for a limited purpose under this rule) revoked for misconduct; and

(D) has read and agrees to comply with the Local Rules of the United States District Court for the District of Massachusetts.

(4) ***Payment of Fee.*** An attorney seeking admission under this rule shall pay the appropriate fee to the clerk of court.

(5) ***Attorney Subject to Pending Disciplinary Proceedings.*** An attorney who otherwise satisfies the requirements of this rule, but who is the subject of disciplinary proceedings pending in another jurisdiction that have not yet been resolved, may seek to appear and practice in this court by providing, in lieu of the certification required by paragraph (e)(3) of this rule, a full explanation of the nature of the proceedings and the alleged underlying conduct. Such an applicant may not be permitted to appear and practice in this court unless the judicial officer concludes that the proceeding is not reasonably likely to result in disbarment or suspension or other serious attorney disciplinary action.

(f) **Attorneys in Removed Cases.** An attorney who is a member of the Massachusetts bar who represents a party in a case that has been removed to this court, and who filed an appearance in that case prior to its removal, may appear and practice in this court in that case upon payment of the fee and the filing of the certification required by paragraph (e)(3) of this rule.

(g) **Attorneys in Multidistrict Litigation Cases.** An attorney who represents a party in a case transferred to this district by the Judicial Panel on Multidistrict Litigation, and who filed an appearance in that case prior to its transfer, may appear and practice in this court in that case under such circumstances as the assigned judge may by order provide.

(h) **Attorneys in Other Transferred Cases.** An attorney who represents a party in a case transferred to this district from another federal district, other than an MDL case, and who filed an appearance in that case prior to its transfer, shall seek admission under this rule within 21 days of the transfer to this court. The court may waive the requirement of local counsel for good cause shown.

(i) **Attorneys in Bankruptcy Cases.** An attorney who has been granted leave to appear *pro hac vice* in the bankruptcy court for this district in a case, contested matter, or adversary proceeding may appear and practice in any appeal, motion to withdraw the reference, or other proceeding pending in that same case, matter, or proceeding in the district court without having to file another motion to appear *pro hac vice* in the district court.

(j) **Emergency Filings.** An attorney who is not a member of the bar of this district may sign a complaint, answer, or other pleading reasonably necessary to prevent the expiration of a period of limitations or an entry of default; provided, however, that any such pleading is accompanied by a motion for admission under this subsection, or such a motion is filed no later than 7 days thereafter.

Effective September 1, 1990; amended effective February 1, 2012, January 1, 2015.

RULE 83.5.4 PRACTICE BY LAW STUDENTS

(a) Generally. A qualified law student may appear and practice in this court as set forth in this rule.

(b) Academic and Character Requirements.

(1) ***Generally.*** In order to appear and practice in this court, a student must:

(A) be a third-year law student, or equivalent, at an ABA-accredited law school;

(B) have successfully completed a course for credit, or be currently enrolled in a course for credit, in evidence or trial practice; and

(C) otherwise have the appropriate character, legal ability, and training, as certified by the dean of the student's law school as set forth in this rule.

(2) ***Criminal Cases.*** A student may not appear in a criminal case unless the student has also successfully completed a course for credit in criminal procedure.

(3) ***Civil Cases.*** A student may not appear in a civil case unless the student has also successfully completed a course for credit in civil procedure.

(4) ***Second-Year Students in Clinical Programs.*** Notwithstanding the requirements of paragraph (b)(1)(A) of this rule, a second-year law student, or equivalent, at an accredited law school may appear in a civil case if the student is currently enrolled in a law school clinical instruction program.

(c) Certification Requirements. No student may practice under this rule until the following requirements have been met.

(1) ***Certification by Student.*** The student must sign a written certification that the student has read and will abide by the rules of professional conduct followed by this court and its local rules.

(2) ***Certification by Law School Dean.*** The dean of the student's law school must sign a written certification that the academic and character requirements of subdivision (b) of this rule have been met.

(3) ***Filing with Clerk; Duration.*** Both certifications must be filed with the clerk. The certifications shall be in effect, unless withdrawn earlier, in any matter handled by the student until the date of the student's graduation from law school.

(d) Cases in Which Qualified Students May Appear. A student who is qualified under this rule may appear and practice as set forth below.

(1) ***Representation of Government.*** A student may represent the United States, or any department or agency of the United States, or the Commonwealth of Massachusetts, or any department or agency of the Commonwealth, under the supervision of an attorney who is duly authorized to represent the government.

(2) ***Representation of Indigent Criminal Defendants.*** A student may represent an indigent defendant in criminal proceedings, if the defendant consents as provided in subsection (g), under the supervision of an attorney who has been appointed by the court to represent the defendant.

(3) ***Representation of Indigent Civil Parties.*** A student may represent indigent parties in civil proceedings, if the party consents as provided in paragraph (g) of this rule, under the supervision of:

(A) a member of the district bar appointed by the court to represent the party; or

(B) a member of the district bar employed by a nonprofit program of legal aid or legal assistance or a law school clinical instruction program.

(e) **Requirement of Supervision**. A supervising attorney must be in attendance at all times when a law student is appearing in court or meeting with a client pursuant to this rule.

(f) **Requirement of Appearance by Supervising Attorney.** A supervising attorney must file a written appearance in any matter in which a law student appears under this rule.

(g) **Requirement of Client Consent.** Before performing work for a client, other than the United States or a department or agency of the United States, the law student must:

(1) disclose to the client the student's status as a law student;

(2) obtain from the client a signed document in which the client:

(A) acknowledges having been informed of the student's status; and

(B) authorizes the named student to appear for and represent the client in the litigation or proceedings identified in the document;

(3) have the document approved by the supervising attorney; and
(4) file the document with the clerk of court.

(h) **No Compensation.** No student practicing under this rule may charge or receive any fee or other compensation from a client. A student may, however, receive a fixed compensation paid regularly by a governmental agency, legal aid or legal assistance program, or law school clinical instruction program acting as the employer of the student.

(i) Rules of Professional Conduct. A student practicing under this rule shall comply with the rules of professional conduct of this court. The failure of a supervising attorney to provide proper training or supervision may be grounds for sanctions, disciplinary action, or revocation or restriction of the attorney's authority to supervise students.

(j) Client Communications. Students practicing under this rule shall be treated as attorneys for purposes of applying the law and rules concerning attorney-client privilege, attorney work-product protection, and other rules concerning attorney-client communications.

(k) Acknowledgment of Student Participation. A lawyer may place a student's name and law school on a pleading filed under the lawyer's own name indicating that the law student rendered assistance in the drafting of the pleading without complying with subsections (b) though (g) of this rule.

Effective January 1, 2015.

RULE 83.5.5 PRACTICE BY *PRO SE* LITIGANTS

(a) Generally. An individual who is not represented by counsel and who is a party in a pending proceeding may appear *pro se* and represent himself or herself in the proceeding.

(b) No Representation of Other Parties. An individual appearing *pro se* may not represent any other party and may not authorize any other individual who is not a member of the bar of this district to appear on his or her behalf.

(c) Corporations and Other Entities. A corporation, partnership, limited liability company, trust, estate, or other entity that is not an individual may not appear *pro se*. An individual officer, director, partner, member, trustee, administrator, or executor may not appear on behalf of an entity; provided, however, that if such an individual is also an attorney who is otherwise permitted to practice in this court, the attorney may represent the entity if the representation is otherwise appropriate under the circumstances. The court may strike any pleading filed on behalf of any entity that purports to appear *pro se*.

(d) Requirement to Follow Rules. A *pro se* party is required to comply with these local rules.

(e) Requirement to Provide Mailing Address. Any party who appears *pro se* must provide the clerk and all parties a mailing address at which service upon the *pro se* party can be made. Service of pleadings and other papers under Rule 5 of the Federal Rules of Civil Procedure and Local Rule 5.2 may be made on a *pro se* party by sending copies by regular mail to the party at the designated address.

(f) E-Mail Address. Any party who appears *pro se* may also provide the clerk and all parties an e-mail address at which service upon that party may be made, and a signed written consent to be served electronically at that address. A *pro se* party may thereafter be served electronically at the designated e-mail address.

(g) Requirement for Documents Filed with Court. Any document requiring a signature that is filed by a party appearing *pro se* shall bear the words "*pro se*" following that party's signature. Any such document shall also state the party's mailing address, telephone number (if any), and e-mail address (if the party has consented to service by e-mail).

(h) Requirement to Update Addresses. Every party appearing *pro se* shall inform the clerk and all parties in writing of any change of name, address, telephone number, or e-mail address within 14 days of the change. It is the responsibility of the *pro se* party to notify the clerk and the parties of any change. Any notice sent by the clerk or any party to a *pro se* party shall be deemed delivered and properly served if sent to the most recent address or e-mail address provided by the *pro se* party.

Effective January 1, 2015.

RULE 83.5.6 ONGOING OBLIGATIONS

(a) **Reporting Change of Address.** Each member of the bar of this district must promptly notify the clerk of any change in the attorney's name, law firm name, address, telephone number, or e-mail address. Any notice sent to a member of the bar of this district shall be deemed delivered if sent to the most recent address on file.

(b) **Reporting Disciplinary Matters.** Each member of the bar of this district must promptly notify the clerk of the imposition of any professional discipline against the attorney by any court or body having disciplinary authority over attorneys that resulted in disbarment, suspension, or any other attorney disciplinary action. Such notification must in any event be made within 30 days of the imposition of the disciplinary action, unless good cause is shown for failing to do so. A temporary suspension for failure to pay bar dues, not exceeding 30 days in duration, need not be reported if no other professional discipline was imposed.

(c) **Reporting Criminal Convictions.** Each member of the bar of this district must promptly notify the clerk of any criminal conviction against the attorney.

Effective January 1, 2015.

RULE 83.5.7 REGISTRATION FOR ELECTRONIC CASE MANAGEMENT/ELECTRONIC CASE FILES (CM/ECF)

(a) **Requirement to Register.** Attorneys who are members of the bar of this district or who are permitted to appear and practice under Local Rule 83.5.3 must register as filing users of the court's Case Management/ Electronic Case Filing System ("CM/ECF").

(b) **Form of Registration.** An attorney who files an application for admission to the district bar under Local Rule 83.5.1 need not file a separate registration for electronic filing. All others must complete and submit an approved CM/ECF registration form before filing any documents electronically.

(c) **Training and Participation in Program.** Attorneys who are members of the bar of this district must participate in the CM/ECF program and obtain the necessary training to qualify as a registered user of CM/ECF.

(d) **Improper Use.** Any attorney who is a registered user of CM/ECF may be required by the clerk to undergo additional training, or may be suspended or terminated by the clerk from use of CM/ECF, based on misuse or improper use of CM/ECF.

Effective January 1, 2015.

RULE 83.6.1 RULES OF PROFESSIONAL CONDUCT

(a) Rules of Professional Conduct. The rules of professional conduct for attorneys appearing and practicing before this court shall be the Massachusetts Rules of Professional Conduct adopted by the Massachusetts Supreme Judicial Court, as set forth as Rule 3:07 of that court, as of January 1, 2015, subject to any subsequent amendments made pursuant to paragraph (b) of this rule, and any exceptions set forth in paragraph (c) of this rule.

(b) Amendments to Rules. Any amendment to the Massachusetts Rules of Professional Conduct adopted by the Massachusetts Supreme Judicial Court after [*the effective date of these rules]* shall be deemed adopted by this court as of the same date, unless this court affirmatively declines to adopt it by a majority vote of the full court or stays its adoption pending such a vote. This court may also modify its rules of professional conduct at any time according to its normal rulemaking procedures.

(c) Exceptions to Rules. The court does not adopt the following portions of the Massachusetts Rules of Professional Conduct:

(1) Rule 3.6 (governing trial publicity), to the extent it applies to imminent or pending criminal investigations or litigation in this court; and

(2) Rule 3.8(f) (governing the issuance of certain subpoenas by prosecutors).

(d) Compliance with Rules Required. All attorneys who are admitted or authorized to practice before this court shall comply with its rules of professional conduct in all matters they handle before this court.

Effective September 1, 1990; amended effective August 1, 1997; December 1, 2009, January 1, 2015.

RULE 83.6.2 JURISDICTION FOR DISCIPLINARY MATTERS

All attorneys who are admitted or authorized to practice before this court are deemed to have consented to the jurisdiction of this court for any disciplinary proceedings arising out of any claims of misconduct arising under these rules.

Effective January 1, 2015.

RULE 83.6.3 FORMS OF MISCONDUCT

An attorney may be disciplined pursuant to these rules for the following types of misconduct:

(1) violation of the rules of professional conduct of this court;

(2) willful, recurrent, or egregious violation of these local rules or any order of the court;

(3) (3) failure to notify the court promptly of a criminal conviction or disciplinary action as required by Local Rule 83.5.6(b);

(4) conduct that resulted in disbarment, suspension, or any other attorney disciplinary action in another jurisdiction;

(5) a conviction for a serious crime, as defined in Local Rule 83.6.8; or

(6) conduct that resulted in a continuance without a finding in a matter involving a charge of a serious crime, as defined in Local Rule 83.6.8.

Effective January 1, 2015.

RULE 83.6.4 FORMS OF DISCIPLINE

(a) **Forms of Discipline Generally.** An attorney may be subject to the following types of discipline after a finding of misconduct pursuant to these rules:

(1) disbarment or suspension of the attorney from practicing before this court;

(2) revocation of an admission *pro hac vice* or other admission for a limited purpose under Rule 83.5.3;

(3) public or private reprimand or censure;

(4) monetary sanctions;

(5) restitution to victims of the misconduct; and

(6) such other disciplinary action as may be reasonable under the circumstances.

(b) **Other Sanctions.** Nothing in these rules shall limit the authority of a judge to impose any other sanctions otherwise permitted by law, including without limitation sanctions for contempt of court or for litigation misconduct. The imposition of such other sanctions, by this court or any other court, shall not constitute the imposition of professional discipline within the meaning of these rules.

Effective January 1, 2015.

RULE 83.6.5 DISCIPLINARY PROCEEDINGS

(a) **Procedure Generally.** The following procedures shall be employed in matters of alleged attorney misconduct.

(b) **Screening and Referral.** All complaints of alleged attorney misconduct shall be screened in the first instance by the judge who presided over the case or matter, if any, in which the misconduct occurred. If that judge is unavailable, or if the proper judge cannot be readily determined, the clerk of court shall randomly assign the complaint to a judge other than the presiding judge for screening. Any judge may refer any matter of potential attorney misconduct to the presiding judge, as set forth below, for review and possible further action. If the allegations of attorney misconduct are reasonably plausible and potentially serious, the matter should be referred to the presiding judge.

(c) **Presiding Judge.**

(1) ***Generally.*** After screening and referral, allegations of attorney misconduct shall be handled by the presiding judge.

(2) ***Assignment of Presiding Judge.*** The presiding judge shall not be the judge who referred the matter for review or a judge assigned to the case or matter, if any, in which the matter arose. For cases arising in the Eastern Division, the Miscellaneous Business Docket Judge shall be the presiding judge. For cases arising in the Central Division, the presiding judge shall be the judge assigned to the Western Division. For cases arising in the Western Division, the presiding judge shall be the judge assigned to the Central Division. If the presiding judge is disqualified under this rule, or recuses himself or herself, the matter will be referred to the Chief Judge or, if he or she is disqualified, to the next active district judge in order of seniority. Once a matter has been assigned to a particular judge as the presiding judge, that judge shall remain the presiding judge for that matter unless it is reassigned under Local Rule 40.1(I).

(d) **Initial Review and Action by Presiding Judge.** The presiding judge shall conduct an initial *de novo* review of the matter and shall take one or more of the following actions.

(1) ***No Action.*** The presiding judge may direct that no further action be taken, if he or she concludes that the allegations do not describe a disciplinary violation or otherwise are plainly without merit.

(2) ***Request for Explanation.*** The presiding judge may provide written notice to the attorney specifying the alleged misconduct and affording the attorney an opportunity to explain, either on the record or in writing, why he or she believes that formal disciplinary proceedings should not be commenced. If the presiding judge is satisfied with the explanation, he or she may direct that no further action

be taken, or take such other steps consistent with these rules as may be appropriate.

(3) ***Resolution by Consent.*** The presiding judge may take any action, or enter any order, consistent with these rules to permit a resolution of any disciplinary matter by settlement or consent.

(4) ***Review by Special Counsel.*** The presiding judge may appoint special counsel to conduct an investigation, to make a report to the court, and to perform any other duty set forth in the order of appointment. If the matter proceeds to a formal disciplinary proceeding, the presiding judge may direct that special counsel may continue to act and may present evidence, examine witnesses, and otherwise participate in the proceeding.

(5) ***Temporary Suspension***. The presiding judge may suspend the attorney on a temporary basis pursuant to Local Rule 83.6.6.

(6) ***Commencement of Formal Proceedings.*** The presiding judge may initiate formal proceedings against the attorney, as set forth below.

(7) ***Other Action.*** The presiding judge may take any other action that is authorized by law, not inconsistent with these rules, and reasonably necessary to the exercise of his or her authority under these rules.

(e) Referrals to Other Authorities.

(1) ***State Bar Disciplinary Authorities.*** The presiding judge may refer the matter to a state bar disciplinary authority with a request that the authority report its actions to the court.

(2) ***Federal Authorities.*** In the case of an attorney for the United States or any department of agency of the United States, the presiding judge may refer the matter to the Department of Justice Office of Professional Responsibility, or to any other federal office or agency with supervisory or disciplinary authority over the attorney, with a request that the office or agency report its actions to the court.

(3) ***Effect of Referral.*** The presiding judge may continue to conduct any review, investigation, or proceeding, and impose any discipline, notwithstanding the referral of a matter to an outside authority. In the alternative, the presiding judge may, in the interests of justice, stay or suspend any such review, investigation, or proceeding pending resolution of same or a related matter by another authority.

(4) ***Notification to Clerk.*** The presiding judge shall notify the clerk of any referral to an outside authority, who shall keep a record of all such referrals.

(f) Notice and Opportunity to Be Heard. No discipline shall be imposed against an attorney pursuant to these rules without notice and an opportunity to be heard as to both the finding of misconduct and the form of the discipline.

(g) Discovery. The presiding judge shall order such discovery as may be reasonably necessary to ensure that the proceeding is fair to all parties. The presiding judge may, in his or her discretion, order such additional discovery as may be appropriate under the circumstances.

(h) Requirement of Cooperation. Any attorney who is the subject of an investigation or review, or a witness in such a matter, shall cooperate and shall reasonably and promptly respond to inquiries from the court and its agents; provided, however, that an attorney may make a valid assertion of his or her constitutional rights, any applicable privilege, or any other right provided by law. Any failure to cooperate under this rule may itself result in disciplinary action.

(i) Formal Disciplinary Proceedings.

(1) ***Show Cause Order.*** A formal disciplinary proceeding against an attorney shall commence by the issuance of a show-cause order by the presiding judge. The show-cause order shall direct the attorney to appear and show cause why disciplinary action should not be taken against the attorney for reasons stated in the order.

(2) ***Service of Notice.*** The order may be served upon the attorney by mailing a copy to him or her at the address provided by the attorney pursuant to these local rules or by any other means reasonably calculated to provide notice to the attorney.

(3) ***Special Counsel.*** If special counsel has not already been appointed, the presiding judge may appoint such counsel to present evidence and examine witnesses at any hearing and otherwise to participate in the proceeding.

(4) ***Written Response.*** The attorney shall file a written response to the show-cause order within 28 days after service. If the attorney requests a hearing to resolve any disputed issue of material fact raised in the response, or if the attorney does not dispute the misconduct but wishes to be heard on the issue of the appropriate form of discipline, the presiding judge shall set the matter for hearing.

(5) ***Hearing.*** The presiding judge shall hold a hearing as necessary and appropriate to resolve any disputed issues of material fact, to determine whether any attorney misconduct occurred, and to determine the appropriate form of discipline. The respondent attorney may be represented by counsel and may, upon reasonable request, present evidence and cross-examine witnesses. The presiding judge shall make any factual findings on the record in open court or in a written order.

(6) ***Standard of Proof.*** Any factual predicate must be proved according to the standard of proof applied in attorney discipline matters in the courts of the Commonwealth of Massachusetts.

(7) ***Public Proceeding.*** Unless the presiding judge orders otherwise for good cause shown, any such hearing shall be open to the public.

(8) ***Findings.*** The presiding judge shall issue a written order setting forth its conclusions and the reasons therefor and the final disposition of the matter, including any discipline imposed on the attorney. Any order imposing attorney discipline shall be entered as a final judgment under Fed. R. Civ. P. 54.

(j) Reference to Magistrate Judge. The presiding judge may refer an attorney disciplinary matter to a magistrate judge.

(1) ***Disqualification*****.** The designated magistrate judge shall not be the judge who referred the matter for review or a judge assigned to the case or matter, if any, in which the matter arose.

(2) ***Preliminary Stage*****.** If the matter is at the preliminary or informal stage, the magistrate judge may review the matter, make a report and recommendation to the court, or perform any other duty specified in the order of referral.

(3) ***Formal Disciplinary Proceedings.*** If the matter has proceeded to formal disciplinary proceedings, the magistrate judge shall make a written report and recommendation to the presiding judge, including proposed factual findings.

(4) ***Objections and District Judge Review.*** Any objections to a report and recommendation, and any review by the presiding judge, shall proceed in accordance with the requirements of 28 U.S.C. § 636(b)(1).

(k) Participation of Victims in Proceedings. The court shall give due regard to the victims or potential victims of any attorney misconduct in the conduct of any proceedings and the issuance of any disciplinary order. The court shall endeavor to provide notice of any hearing to such persons and permit them to be heard as appropriate. The court shall also consider whether an order of restitution is appropriate in any disciplinary order.

(l) Appeal.

(1) Generally. An appeal from a judgment or order entered under this rule may be taken in accordance with the Federal Rules of Appellate Procedure and other applicable federal law.

(2) Appeal by Court. An appeal may be taken on behalf of the court by the special counsel who handled the proceeding, or by special counsel appointed for that purpose, if the court, by a majority vote of the full court, so directs. Any district

judge, bankruptcy judge, or magistrate judge may request that the full court consider taking an appeal in a particular matter. The court may delay entry of judgment or take such other steps as may be reasonably necessary to preserve the right of appeal while the matter is under consideration.

Effective January 1, 2015.

RULE 83.6.6 TEMPORARY SUSPENSION

(a) **Temporary Suspension Generally.** The presiding judge, in accordance with this rule, may enter a temporary restraining order or preliminary injunction under Fed. R. Civ. P. 65 immediately suspending an attorney's right to practice law in this court or in the bankruptcy court of this district, pending the outcome of a disciplinary proceeding under these rules.

(b) **No Temporary Suspension by Complaining Judge.** A complaint, referral, or report and recommendation seeking an order of temporary suspension shall be referred to the presiding judge in accordance with Local Rule 83.6.5(c). An order of temporary suspension shall not be entered by a judge who presided over the case or matter, if any, in which the alleged misconduct occurred.

(c) **Notice and Hearing.** No order of temporary suspension may be made without notice to the attorney and an opportunity to be heard.

(d) **Standard for Temporary Suspension.** The presiding judge shall consider the following factors when determining whether to issue an order of temporary suspension:

(1) whether a disciplinary complaint has a substantial likelihood of success on the merits and is likely to result in an order of suspension or disbarment;

(2) whether the attorney's continued practice of law in this court pending the outcome of any disciplinary proceedings presents a significant ongoing risk of harm to the public;

(3) whether the balance of equities, including a weighing of the ongoing risk of harm to the public against the harm to the attorney resulting from an immediate suspension, warrants suspension; and

(4) whether the public interest favors entry of the order.

(e) **Written Report by District Judge.** If a district judge determines that an attorney should be the subject of an order of temporary suspension, the district judge shall issue an order to show cause why an attorney should not be immediately suspended from practice in the district court and a written report setting forth the basis of the judge's belief. The order to show cause and written report shall be served on the attorney with a date by which the attorney should respond. The matter shall be immediately referred to the presiding judge, who shall consider it on an expedited basis.

(f) **Report and Recommendation by Bankruptcy Judge or Magistrate Judge.** If a bankruptcy judge or magistrate judge believes that an attorney should be the subject of an order of temporary suspension, the bankruptcy judge or magistrate judge shall issue an order to show cause why the attorney should not be immediately suspended from practice

in the district court and a report and recommendation to the district court setting forth the facts warranting such relief. The order to show cause and report and recommendation shall be served on the attorney with a date by which the attorney should respond. The order to show cause and the report and recommendation shall be immediately referred to the presiding judge, who shall consider the matter on an expedited basis.

(g) Modification of Suspension. After notice and hearing, and for good cause shown, the presiding judge may vacate or modify any order of temporary suspension issued under this rule.

(h) Formal Disciplinary Proceedings. If a formal disciplinary proceeding has not yet been initiated under Local Rule 83.6.5(g) at the time the order of temporary suspension is requested or issued, such a proceeding shall be initiated reasonably promptly thereafter.

Effective January 1, 2015.

RULE 83.6.7 DISBARMENT BY CONSENT

(a) **Consent to Disbarment Generally.** Any attorney admitted to practice before this court may consent to disbarment.

(b) **Procedure.** In order to consent to disbarment, the attorney must deliver an affidavit to the court stating that:

(1) the attorney wishes to consent to disbarment;

(2) the attorney's consent is freely and voluntarily given and not made under coercion or duress;

(3) the attorney is fully aware of the implications of consenting to disbarment; and

(4) the attorney is aware of the pending investigation or proceeding and that grounds exist for disciplinary action, the nature of which shall be specifically set forth.

The affidavit shall also identify all jurisdictions in which the attorney has been admitted to practice. Upon receipt of the required affidavit, the chief judge shall enter an order disbarring the attorney, and direct the clerk to send a copy of the order to all jurisdictions in which the disbarred attorney has been admitted to practice.

Effective January 1, 2015.

RULE 83.6.8 DISCIPLINE AFTER CRIMINAL CONVICTION

(a) **Effect of Criminal Conviction.**

(1) ***Summary Suspension.*** When an attorney who is a member of the bar of this district or who is permitted to practice in this court has been convicted of a serious crime, as defined in paragraph (b) of this rule, the attorney shall be summarily suspended from practicing before this court.

(2) ***Suspension Procedure.*** The court shall enter an order immediately suspending an attorney from practicing before this court upon the filing of a certified copy of a judgment or other official court records reflecting a criminal conviction. A copy of such order shall immediately be served upon the attorney. The matter shall then be referred to the presiding judge in accordance with Local Rule 83.6.5(c) for further review and action.

(3) ***Setting Aside Suspension.*** Upon good cause shown, the presiding judge may set aside such order when it appears in the interest of justice to do so.

(4) ***Subsequent Disciplinary Proceeding.*** In addition to suspending the attorney, the presiding judge shall commence a formal disciplinary proceeding against the attorney, provided, however, that the disciplinary proceeding so instituted shall not be brought to final hearing until all appeals from the conviction are concluded.

(b) Definition of "Serious Crime." The term "serious crime" shall be defined for purposes of this rule as follows.

(1) ***Types of Crime.*** "Serious crime" shall include:

(A) any felony or other crime punishable by a term of imprisonment of more than one year;

(B) any crime involving obstruction of justice, interference with the administration of justice, witness intimidation, perjury, or suborning perjury;

(C) any crime involving false statements, fraud, false swearing, false pretenses, misrepresentation, or deceit;

(D) any crime involving bribery, extortion, or unlawful payments to a government official;

(E) any crime involving misappropriation of property or embezzlement;

(F) any crime involving willful failure to file tax returns or filing false tax returns; and

(G) any attempt, conspiracy, or solicitation of another to commit such crimes.

(2) ***Jurisdictions.*** A conviction for a "serious crime" shall qualify if it occurred in any court of the United States, any state, the District of Columbia, or any territory, commonwealth, or possession of the United States.

(c) **Definition of "Convicted."** The term "convicted" shall be defined for purposes of this rule to include any disposition of a criminal matter by a finding of guilty or a plea of *nolo contendere*, whether or not that disposition has been appealed or is otherwise under court review.

(d) **Effect of Reversal of Conviction.** An attorney who was suspended under the provisions of this rule will be reinstated immediately upon the filing of a certificate demonstrating that the conviction has been reversed. The reinstatement will not, however, automatically terminate any disciplinary proceeding then pending against the attorney arising out of the matters for which the attorney was prosecuted.

(e) **Effect of Other Crimes.** Evidence that an attorney committed a crime other than a "serious crime" as defined in this rule may form the basis for a disciplinary proceeding or other action against the attorney, even though it may not result in a summary suspension.

Effective January 1, 2015.

RULE 83.6.9 RECIPROCAL DISCIPLINE

(a) **Generally.** When an attorney who is a member of the bar of this district or who is permitted to practice in this court has been disbarred or suspended in any other jurisdiction, the attorney may be subject to reciprocal discipline as set forth below.

(b) Notice and Show-Cause Order. Upon the filing of a certified copy of a judgment, order, or other official record demonstrating that the attorney has been disciplined by another court, this court shall promptly issue a notice to the attorney with the following:

(1) a copy of the judgment or order or other official record; and

(2) an order to show cause, within 28 days after service of the order, why this court should not impose the identical discipline.

(c) Disciplinary Action or Referral. If the attorney fails to respond within the 28-day period, or does not contest the matter, this court shall impose the identical discipline imposed by the other court. If the attorney responds within that period and contests the matter, the matter shall be referred to the presiding judge in accordance with Local Rule 83.6.5(c) for further review and action.

(d) Effect of Stay. In the event the action imposed in the other jurisdiction has been stayed there, any reciprocal action taken by this court shall be deferred until such stay expires.

(e) Effect of Decision by Other Court.

(1) If, with respect to the action taken by the other court, the presiding judge finds:

(A) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(B) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this court could not, consistent with its duty, accept as final the other court's conclusion on that subject;

(C) that the imposition of substantially similar discipline or the making of the same finding by this court would result in grave injustice; or

(D) that the conduct at issue is deemed by the presiding judge to warrant substantially different disciplinary action,

the presiding judge may enter such other orders as he or she deems appropriate under the circumstances.

(2) In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of any proceeding under this rule.

(f) **Definition of "Court."** The term "court" shall be defined for purposes of this rule as any court, or other governmental body having supervisory or disciplinary authority over attorneys, of the United States, any state, the District of Columbia, or any territory, commonwealth, or possession of the United States.

Effective January 1, 2015.

RULE 83.6.10 REINSTATEMENT

I. **Reinstatement after Suspension.** An attorney who has been suspended shall be automatically reinstated at the end of the period of suspension upon the filing of an affidavit stating that:

(1) the period of suspension has expired; and

(2) the attorney has complied with all requirements of any order of suspension.

(b) Reinstatement after Disbarment or Resignation.

(1) ***Generally.*** An individual who has ceased to be a member of the district bar for any reason, including disbarment or resignation, may apply for reinstatement.

(2) ***Application Requirements.*** An applicant for reinstatement shall:

(A) complete, verify, and file an application for reinstatement on an official form provided by the clerk;

(B) file an affidavit of compliance with any applicable court order imposing conditions as a part of attorney discipline; and

(C) pay the approved attorney reinstatement fee to the clerk.

(3) ***Waiting Period.*** An attorney who has been disbarred after hearing or by consent may not apply for reinstatement until at least 5 years after the effective date of disbarment.

(4) ***Procedure on Application.*** An application for reinstatement shall be referred to the presiding judge in accordance with Local Rule 83.6.5(c) for review and further action.

(A) The presiding judge may designate a magistrate or bankruptcy judge to issue a report and recommendation as to whether or not the application should be approved.

(B) The presiding judge may appoint special counsel to conduct an investigation, to make a report to the court, and to perform any other duty set forth in the order of appointment.

(C) After notice, the presiding judge shall schedule a hearing on the application.

(D) The presiding judge may refer the matter to a magistrate judge for report and recommendation pursuant to 28 U.S.C. § 636(b)(l).

(5) ***Standard for Reinstatement.*** The applicant shall have the burden of demonstrating by clear and convincing evidence that he or she is qualified and fit to practice law before this court and that the applicant's resumption of the practice of law before this court will not adversely affect the interests of potential clients, public confidence in the integrity of the bar of this court, or the proper administration of justice.

(6) ***Approval by District Court Required.*** If the presiding judge grants the application of an applicant who had been previously disbarred, the matter will be referred to the full court. No order of reinstatement after an order of disbarment shall take effect except upon a majority vote of the judges of the full court.

Effective January 1, 2015.

RULE 83.6.11 PUBLIC ACCESS AND CONFIDENTIALITY

(a) Matters Presumed to Be Public. All matters before the court concerning alleged attorney misconduct and discipline are presumptively public.

(b) Exceptions. The court, on its own motion or on request, may redact or protect the following types of matters and file them under seal.

(1) ***Victim or Third-Party Privacy***. Any matters reasonably necessary to protect the privacy of a victim of attorney misconduct or of any innocent third party.

(2) ***Privilege***. Any matters reasonably necessary to protect information subject to a valid attorney-client or other privilege.

(3) ***Grand Jury or Criminal Investigation***. Any matters reasonably necessary to protect information subject to grand jury secrecy or to protect an ongoing criminal investigation.

(4) ***Personal Privacy.*** Any matters of a highly personal or private nature; provided, however, that if the personal or private matter was the basis, at least in part, of a disciplinary action, a decision not to take disciplinary action, or a decision to mitigate discipline, public disclosure is required in sufficient detail to permit an informed public understanding of the court's decision.

(5) ***Exceptional Circumstances.*** Any other matters that, due to exceptional circumstances presented in the case, should not be disclosed in the interests of justice.

Any such redaction or protective order shall be in writing or made on the record and shall state the reasons for the order. The court, in fashioning such an order, shall give due regard to the need to protect the public from further attorney misconduct and to maintain public confidence in the integrity of the court.

Effective January 1, 2015.

RULE 106.1 GRAND JURIES

(a) The names of any jurors drawn from the qualified jury wheel and selected to sit on a grand jury shall be kept confidential and not made public or disclosed to any person not employed by the district court, except as otherwise authorized by a court order in an individual case pursuant to 28 U.S.C. § 1867(f).

(b) All subpoenas, motions, pleadings, and other documents filed with the clerk concerning or contesting grand jury proceedings shall be sealed and impounded unless otherwise ordered by the court based upon a showing of particularized need. Impoundment under this rule shall not preclude necessary service of papers on opposing parties or their counsel nor prohibit the clerk from providing copies of papers to the party or counsel filing same.

Effective September 1, 1990.

RULE 106.2 RELEASE OF INFORMATION BY COURTHOUSE PERSONNEL IN CRIMINAL CASES

All court supporting personnel, including the United States Marshal, Deputy United States Marshals, the Clerk of Court, deputy clerks, probation officers, assistant probation officers, bailiffs, court reporters, and employees or subcontractors retained by the court-appointed official reporters, judges' secretaries and law clerks and student assistants, and other employees are prohibited from disclosing without authorization by the court, information relating to a pending grand jury proceeding or criminal case that is not part of the public records of the court. Divulging information concerning in camera hearings is also prohibited.

Effective September 1, 1990.

RULE 112.1 MOTION PRACTICE

Unless otherwise specified in these Local Rules or by order of the court, motion practice in criminal cases shall be subject to Local Rule 7.1.

Adopted September 8, 1998; effective December 1, 1998; February 1, 2012.

RULE 112.2 EXCLUDABLE DELAY PURSUANT TO THE SPEEDY TRIAL ACT

(a) Excludable Delay Generally. The Court, having found that a fair and prompt resolution of criminal cases is best served by minimizing formal motion practices and establishing the system of discovery set forth in these Local Rules, has determined that the following periods of time may be excluded, under 18 U.S.C. §§ 3161(h)(1)(D) & (H) and (h)(7)(A), to serve the ends of justice in order to accomplish such purposes:

(1) the period from arraignment to the Initial Status Conference conducted under Local Rule 116.5(a), during which period the parties shall produce the automatic discovery required under Local Rule 116.1(b) and (c) and develop their discovery plans, and defendants shall consider the need for pretrial motions under Fed. R. Crim. P. 12;

(2) no more than 14 days from the filing of a copy of a letter requesting discovery under Local Rule 116.3(a);

(3) no more than 14 days from the date on which a written response to a letter requesting discovery under Local Rule 116.3(a) is due to the filing of a motion seeking the discovery, provided that the party receiving the discovery request either refuses to furnish the requested discovery or fails to respond to the request, and the party requesting the discovery actually files a motion seeking discovery.

(b) Requirement of Order of Excludable Delay. The time periods indicated above will not be automatically excluded. All such periods of excludable delay must be included in an order issued by the District Judge or Magistrate Judge.

(c) Exclusion of Additional Periods. Nothing in this rule shall preclude the Court from excluding additional periods of time as appropriate under 18 U.S.C. §3161(h).

(d) Procedure under Waiver of Automatic Discovery. If a defendant files the Waiver provided under Local Rule 116.1(b), all periods of excludable delay shall be calculated pursuant to the Speedy Trial Act without regard to the provisions of this Local Rule.

Adopted September 8, 1998; effective December 1, 1998; amended effective February 1, 2012.

RULE 112.4 CORPORATE DISCLOSURE STATEMENT

(a) A nongovernmental corporate party to a criminal proceeding in this court must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states there is no such corporation.

(b) If an organization is a victim of the alleged criminal activity, the government must file a statement identifying the victim. If the organizational victim is a corporation, the statement must also disclose the information required by Local Rule 112.4 (a) charged in any indictment or information.

(c) A party must file the Local Rule 112.4 (a) statement upon its first appearance, pleading, petition, motion, response or other request addressed to the court and must promptly supplement the statement upon any change in the identification that the statement requires.

Adopted December 4, 2000; effective January 1, 2001; amended effective February 1, 2012.

RULE 116.1 DISCOVERY IN CRIMINAL CASES

(a) Discovery Alternatives.

(1) Automatic Discovery. In all felony cases and Class A misdemeanor cases (except those within the Central Violations Bureau), unless a defendant waives automatic discovery in accordance with paragraph (b) below, all discoverable material and information in the possession, custody, or control of the government and the defendant, the existence of which is known, or by the exercise of due diligence may become known, to the attorneys for those parties, must be disclosed to the opposing party without formal motion practice at the times and under the automatic procedures specified in these Local Rules.

(2) Non-Automatic Discovery. In petty offense cases and Class A misdemeanor cases within the Central Violations Bureau, and in cases where the defendant waives automatic discovery in accordance with paragraph (b) below, the defendant must obtain discovery directly through the provisions of the Federal Rules of Criminal Procedure in the manner provided under Local Rule 116.3.

(b) Waiver. A defendant shall be deemed to have requested all the discovery authorized by Fed. R. Crim. P. 16(a)(1)(A)-(F) unless that defendant files a Waiver of Request for Disclosure (the "Waiver") at arraignment or within such additional time as the Court may allow upon motion made by the defendant at arraignment. If the Waiver is not timely filed, the defendant shall be subject to the correlative reciprocal discovery obligations of Fed. R. Crim. P. 16(b) and this rule and shall be deemed to have consented to the exclusion of time for Speedy Trial Act purposes as provided in Local Rule 112.2(a). If the Court allows the defendant additional time in which to file the Waiver, and no Waiver is timely filed, the 28-day period for providing automatic discovery established in Subdivision (c) of this rule shall begin to run on the last date allowed for filing the Waiver, and all dates for filing discovery letters and motions established in Local Rule 116.3 shall be adjusted accordingly.

(c) Automatic Discovery Provided by the Government.

(1) Following Arraignment. Unless a defendant has filed the Waiver in accordance with paragraph (b) above, within 28 days of arraignment (except a Rule 11 arraignment on an information), absent a contrary schedule established by the Court pursuant to paragraphs (e) and (f) below, the government must produce to the defendant:

(A) Fed. R. Crim. P. 16 Materials. All of the information to which the defendant is entitled under Fed. R. Crim. P. 16(a)(1)(A)-(F).

(B) Search Materials. A copy of any search warrant (with supporting application, affidavit, and return) and a written description of any consent search or warrantless search (including an inventory of items seized):

(i) that resulted in the seizure of evidence or led to the discovery of evidence that the government intends to use in its case-in-chief; or

(ii) that was obtained for or conducted of the defendant's property, residence, place of business, or person, in connection with investigation of the charges contained in the indictment.

(C) Electronic Surveillance.

(i) a written description of any interception of wire, oral, or electronic communications as defined in 18 U.S.C. § 2510, relating to the charges in the indictment in which the defendant was intercepted and a statement whether the government intends to use any such communications as evidence in its case-in-chief; and

(ii) a copy of any application for authorization to intercept such communications relating to the charges contained in the indictment in which the defendant was named as an interceptee or pursuant to which the defendant was intercepted, together with all supporting affidavits, the Court orders authorizing such interceptions, and the Court orders directing the sealing of intercepted communications under 18 U.S.C. § 2518(a).

(D) Consensual Interceptions.

(i) a written description of any interception of wire, oral, or electronic communications, relating to the charges contained in the indictment, made with the consent of one of the parties to the communication ("consensual interceptions"), in which the defendant was intercepted or which the government intends to use in its case-in-chief.

(ii) nothing in this subsection is intended to determine the circumstances, if any, under which, or the time at which, the attorney for the government must review and produce communications of a defendant in custody consensually recorded by the institution in which that defendant is held.

(E) Unindicted Coconspirators. As to each conspiracy charged in the indictment, the name of any person asserted to be a known unindicted coconspirator. If subsequent litigation requires that the name of any such unindicted coconspirator be referenced in any filing directly with the Court, that information must be redacted from any public filing and be filed under Local Rule 7.2 pending further order of the Court.

(F) Identifications.

(i) A written statement whether the defendant was a subject of an investigative identification procedure used with a witness the government anticipates calling in its case-in-chief involving a line-up, show-up, photospread or other display of an image of the defendant.

(ii) If the defendant was a subject of such a procedure, a copy of any, recording, photospread, image or other tangible evidence reflecting, used in or memorializing the identification procedure.

(2) Exculpatory Information. The timing and substance of the disclosure of exculpatory evidence is governed by Local Rule 116.2.

(d) Automatic Discovery Provided by the Defendant. Unless a defendant has filed the Waiver in accordance with paragraph (b) above, within 28 days after arraignment (except a Rule 11 arraignment on an information), absent a contrary schedule established by the Court pursuant to paragraphs (e) and (f) below, the defendant must produce to the government all material described in Fed. R. Crim. P. 16(b)(1)(A) and (B).

(e) Deadline for Automatic Discovery. At arraignment, the Magistrate Judge shall set a date for completion of automatic discovery in accordance with this rule. The date may be extended on motion or request of any party.

(f) Alternative Discovery Schedule. The parties shall inform the court at arraignment, or as soon as practicable thereafter, of any issues that might require an alternative discovery schedule. Requests for an alternative discovery schedule in complex cases shall be liberally granted. The Court shall not allow an alternative discovery schedule without providing a date for the completion of automatic discovery.

(g) Non-Automatic Discovery Provided by the Parties. If the defendant files the Waiver, all requests for discovery and reciprocal discovery, and all responses to such requests, shall be made in writing and filed with the court. Unless a greater or lesser amount of time is established by the court upon motion and for good cause shown, within 28 days of receiving a letter or motion requesting discovery, a party shall produce all discovery responsive to those requests to which it does not object and shall file a written response to those requests (if any) to which it does object, explaining the basis for its objections.

Adopted September 1, 1990; amended effective December 1, 1998; amended effective February 1, 2012.

RULE 116.2 DISCLOSURE OF EXCULPATORY EVIDENCE

(a) Definition. Exculpatory information is information that is material and favorable to the accused and includes, but is not necessarily limited to, information that tends to:

(1) cast doubt on defendant's guilt as to any essential element in any count in the indictment or information;

(2) cast doubt on the admissibility of evidence that the government anticipates using in its case-in-chief, that might be subject to a motion to suppress or exclude, which would, if allowed, be appealable pursuant to 18 U.S.C. § 3731;

(3) cast doubt on the credibility or accuracy of any evidence that the government anticipates using in its case-in-chief; or

(4) diminish the degree of the defendant's culpability or the defendant's Offense Level under the United States Sentencing Guidelines.

(b) Timing of Disclosure by the Government. Unless the government invokes the declination procedure under Local Rule 116.6, the government must produce to the defendant exculpatory information in accordance with the following schedule:

(1) Within the time period designated in Local Rule 116.1(c)(1), or by any alternative date established by the Court:

> (A) information that would tend directly to negate the defendant's guilt concerning any count in the indictment or information;
>
> (B) information that would cast doubt on the admissibility of evidence that the government anticipates using in its case-in-chief and that could be subject to a motion to suppress or exclude, which would, if allowed, be appealable pursuant to 18 U.S.C. § 3731; and
>
> (C) a statement whether any promise, reward, or inducement has been given to any witness whom the government anticipates calling in its case-in-chief, identifying by name each such witness and each promise, reward, or inducement, and a copy of any promise, reward, or inducement reduced to writing
>
> (D) a copy of any criminal record of any witness whom the government anticipates calling in its case-in-chief, identifying by name each such witness;
>
> (E) a written description of any criminal cases pending against any witness whom the government anticipates calling in its case-in-chief, identifying by name each such witness.

(F) a written description of the failure of any percipient witness identified by name to make a positive identification of a defendant, if any identification procedure has been held with such a witness with respect to the crime at issue.

(2) Not later than 21 days before the trial date established by the judge who will preside at the trial:

(A) any information that tends to cast doubt on the credibility or accuracy of any witness or evidence that the government anticipates calling or offering in its case-in-chief,

(B) any inconsistent statement, or a description of such a statement, made orally or in writing by any witness whom the government anticipates calling in its case-in-chief, regarding the alleged criminal conduct of the defendant;

(C) any statement or a description of such a statement, made orally or in writing by any person, that is inconsistent with any statement made orally or in writing by any witness the government anticipates calling in its case-in-chief, regarding the alleged criminal conduct of the defendant;

(D) information reflecting bias or prejudice against the defendant by any witness whom the government anticipates calling in its case-in-chief;

(E) a written description of any prosecutable federal offense known by the government to have been committed by any witness whom the government anticipates calling in its case-in-chief;

(F) a written description of any conduct that may be admissible under Fed. R. Evid. 608(b) known by the government to have been committed by a witness whom the government anticipates calling in its case-in-chief; and

(G) information known to the government of any mental or physical impairment of any witness whom the government anticipates calling in its case-in-chief, that may cast doubt on the ability of that witness to testify accurately or truthfully at trial as to any relevant event.

(3) No later than the close of the defendant's case: exculpatory information regarding any witness or evidence that the government intends to use in rebuttal.

(4) Before any plea or to the submission by the defendant of any objections to the Pre-Sentence Report, whichever first occurs: a written summary of any information in the government's possession that tends to diminish the degree of the defendant's culpability or the defendant's Offense Level under the United States Sentencing Guidelines.[113]

(5) If an item of exculpatory information can reasonably be deemed to fall into more than one of the foregoing categories, it shall be deemed for purposes of determining when it must be produced to fall into the category which requires the earliest production.

Adopted September 8, 1998; effective December 1, 1998; amended effective February 1, 2012.

RULE 116.3 DISCOVERY MOTION PRACTICE

(a) Letter Request for Discovery. Within 14 days of the completion of automatic discovery, any party by letter to the opposing party may request additional discovery. The opposing party shall reply in writing to the requests contained in such letter, no later than 14 days after its receipt, stating whether that party agrees or does not agree to furnish the requested discovery and, if that party agrees, when the party will furnish the requested discovery. A copy of the discovery request letter and any response must also be filed with the Clerk's Office.

(b) Agreement to Provide Discovery. If a party agrees in writing to provide the requested discovery, the agreement shall be enforceable to the same extent as a court order requiring the agreed-upon disclosure.

(c) Explanation for Lack of Agreement. If a party does not agree to provide the requested information, that party must provide a written statement of the basis for its position.

(d) No Need to Request Automatic Discovery. A defendant participating in automatic discovery should not request information expressly required to be produced under Local Rule 116.1, because all such information is required to be produced automatically in any event.

(e) No Motion before Response to Request. Except in an emergency, no discovery motion, or request for a bill of particulars, shall be filed until the opposing party has declined in writing to provide the requested discovery or has failed to respond in writing within 14 days of receipt of a written discovery request.

(f) No Motion before Conference with Opponent. Except in an emergency, no discovery motion, or request for a bill of particulars, shall be filed before, the moving party has conferred, or attempted in good faith to confer, with opposing counsel to attempt to eliminate or narrow the areas of disagreement. In the motion or request, the moving party shall certify that a good faith attempt was made to eliminate or narrow the issues raised in the motion through a conference with opposing counsel or that a good faith attempt to comply with the requirement was precluded by the opposing party's unwillingness or inability to confer.

(g) Timing of Motion. Any discovery motion shall be filed within 14 days of receipt of the opposing party's written reply to the letter requesting discovery described in subdivision (a) of this rule or within 14 days of the passage of the period within which the opposing party has the obligation to reply pursuant to subsection (a). The discovery motion shall state with particularity each request for discovery, followed by a concise statement of the moving party's position with respect to such request, including citations of authority.

(h) Multi-Defendant Cases. In multi-defendant cases, except with leave of court, the defendant parties must confer and, to the maximum extent possible in view of any potentially differing positions of the defendants, consolidate their written requests to the government for any discovery. If a discovery motion is to be filed, the defendant parties must endeavor to the maximum extent possible to file a single consolidated motion. Each defendant need not join in every written request submitted to the government or filed in a consolidated motion, but all

defense requests and motions, whether of not joined in by each defendant must to the maximum extent possible be contained within a single document or filing.

(i) Timing of Response to Motions. The opposing party must file its response to all discovery motions within 14 days of receipt. In its response, the opposing party, as to each request, shall make a concise statement of the opposing party's basis for opposing that request, including citations to authority.

(j) Subsequent Requests. The procedure set forth in this rule shall apply to any subsequent requests for discovery. When filing a discovery motion that is based on a subsequent discovery request, the moving party must additionally certify that the discovery request resulting in the motion was prompted by information not known, or issues not reasonably foreseeable, to the moving party before the deadline for discovery motions, or that the delay in making the request was for other good cause, which the moving party must describe with particularity.

Adopted September 8, 1998; effective December 1, 1998; amended effective February 1, 2012.

RULE 116.4 SPECIAL PROCEDURES FOR TAPE RECORDINGS

(a) Availability of Audio and Video Recordings

(1) The government must provide at least one copy of all audio and video recordings in its possession that are discoverable for examination and review by the defendant parties.

(2) If a defendant requests additional copies, the government must make arrangements to provide or to enable that defendant to make such copies at that defendant's expense.

(3) If in a multidefendant case any defendant is in custody, the government must insure that an extra copy of all audio and video recordings is available for review by the defendant(s) in custody.

(b) Composite Recordings, Preliminary Transcripts and Final Transcripts. The parties must make arrangements promptly to provide or make available for inspection and copying by opposing counsel all:

(1) Composite electronic surveillance or consensual interception recordings to be used in that party's case-in-chief at trial, once prepared.

(2) Preliminary transcripts, once prepared. A preliminary transcript may not be used at trial or in any hearing on a pretrial motion without the prior approval of the Court based on a finding that the preliminary transcript is accurate in material respects and it is in the interests of the administration of justice to use it.

(3) Final transcripts, once prepared.

(4) Nothing in this Local Rule shall be construed to require a party to prepare composite recordings, or preliminary or final transcripts, of any recording.

Adopted September 8, 1998; effective December 1, 1998; amended effective February 1, 2012.

RULE 116.5 STATUS CONFERENCES AND STATUS REPORTS PROCEDURE

(a) Initial Status Conference. On or about the 14th day following the date scheduled for the completion of automatic discovery, the Magistrate Judge shall convene an Initial Status Conference with the attorneys for the parties who will conduct the trial. Unless otherwise ordered by the court, counsel shall confer and file a joint memorandum no later than 7 days before the Initial Status Conference. The joint memorandum must include the following issues and any other issues relevant to the progress of the case, which counsel must be prepared to discuss at the conference:

(1) the status of automatic discovery and any pending discovery requests;

(2) the timing of any additional discovery to be produced;

(3) the timing of any additional discovery requests;

(4) whether any protective orders addressing the disclosure or dissemination of sensitive information concerning victims, witnesses, defendants, or law enforcement sources or techniques may be appropriate;

(5) the timing of any pretrial motions under Fed. R. Crim. P. 12(b);

(6) the timing of expert witness disclosures;

(7) periods of excludable delay under the Speedy Trial Act;

(8) the timing of an Interim Status Conference or Final Status Conference, as the case may require.

If the defendant indicates an intention to change his/her plea to guilty, or if discovery is complete and the only issues that remain or are anticipated are ones appropriately resolved by the District Judge, the Magistrate Judge may, at the parties' request, treat the Initial Status Conference as a Final Status Conference under Subsection (c) of this Local Rule and transfer the case to the District Judge along with the Final Status Report required by Subsection (d) of this Local Rule. Otherwise, the Magistrate Judge shall issue a scheduling order and an order of excludable delay that reflect the deadlines and periods of excludable delay established at the Initial Status Conference.

(b) Interim Status Conference. At the Initial Status Conference, unless the Magistrate Judge decides to transfer the case to the District Judge under subsection (a) of this rule, the Magistrate Judge shall schedule an Interim Status Conference or a Final Status Conference, as needed, giving due regard to the complexity of the case and the period of time that the parties expect will be required to complete discovery and pretrial motions.

Unless otherwise ordered by the court, counsel shall confer and file a joint memorandum no later than 7 days before the Interim Status Conference. The joint memorandum must address the

following issues, and any other issues relevant to the progress of the case, which counsel must be prepared to discuss at the conference:

(1) the status of automatic discovery and any pending discovery requests;
(2) the timing of any additional discovery to be produced;

(3) the timing of any additional discovery requests;

(4) whether any protective orders addressing the disclosure or dissemination of sensitive information concerning victims, witnesses, defendants, or law enforcement sources or techniques may be appropriate;

(5) the status of any pretrial motions under Fed. R. Crim. P. 12(b);

(6) the timing of expert witness disclosures;

(7) defenses of insanity, public authority, or alibi;

(8) periods of excludable delay under the Speedy Trial Act;

(9) the status of any plea discussions and likelihood and estimated length of trial;

(10) the timing of the Final Status Conference or any further Interim Status Conference.

The Magistrate Judge may waive the Interim Status Conference if the parties request such a waiver and the Magistrate Judge determines that the information in the joint memorandum obviates the need for the conference.

If the defendant indicates an intention to change his/her plea to guilty, or if discovery is complete and the only issues that remain or are anticipated are ones appropriately resolved by the District Judge, the Magistrate Judge may, at the parties' request, treat an Interim Status Conference as a Final Status Conference under Subsection (c) of this Local Rule and transfer the case to the District Judge along with the Final Status Report required by Subsection (d) of this Local Rule. Otherwise, the Magistrate Judge shall issue a scheduling order and an order of excludable delay that reflect the deadlines and periods of excludable delay established at the Interim Status Conference or in the parties' joint memorandum, as the case may be.

(b) **Final Status Conference.** In all felony cases and Class A misdemeanor cases to be heard by a District Judge, before the Magistrate Judge issues the Final Status Report required by subdivision (d) of this rule, the Magistrate Judge shall, if necessary, convene a Final Status Conference with the attorneys who will conduct the trial. Counsel shall confer and file a joint memorandum no later than 7 days before the Final Status Conference. The joint memorandum must address the following issues, and any other issues relevant to the progress of the case, which counsel must be prepared to discuss at the conference:

(1) whether the defendant requests that the case be transferred to the District Judge for a Rule 11 hearing;

(2) whether, alternatively, the parties move for a pretrial conference before the District Judge in order to resolve pretrial motions (if any) and schedule a trial date and, if so:

> (A) whether the parties have produced all discovery they intend to produce and, if not, the identity of any additional discovery and its expected production date;
>
> (B) whether all discovery requests and motions have been made and resolved and, if not, the nature of the outstanding requests or motions and the date they are expected to be resolved;
>
> (C) whether all motions under Fed. R. Crim. P. 12(b) have been filed and responded to and, if not, the motions that are expected to be filed and the date they will ready for resolution;
>
> (D) whether the Court should order any additional periods of excludable delay, the number of non-excludable days remaining, and whether any matter is currently tolling the running of the time period under the Speedy Trial Act; and
>
> (E) the estimated number of trial days; and

(3) any other matters specific to the particular case that would assist the District Judge upon transfer of the case from the Magistrate Judge.

If the joint memorandum permits the Magistrate Judge to prepare the Final Status Report without the necessity of an additional status conference, the Magistrate Judge may waive the Final Status Conference and issue an order transferring the case to the District Judge.

(d) Final Status Report. After the Final Status Conference, or upon receipt of the Joint Final Status Memorandum if no conference is deemed necessary, the Magistrate Judge shall transfer the case to the District Judge along with a Final Status Report that incorporates the information provided by the parties at the Final Status Conference or in the Joint Final Status Memorandum, as the case may be.

Adopted September 8, 1998; effective December 1, 1998; amended effective December 1, 2009; February 1, 2012.

RULE 116.6 DECLINATION OF DISCLOSURE AND PROTECTIVE ORDERS

(a) Declination. If in the judgment of a party it would be detrimental to the interests of justice to make any of the disclosures required by these Local Rules, such disclosures may be declined, before or at the time that disclosure is due, and the opposing party advised in writing, with a copy filed in the Clerk's Office, of the specific matters on which disclosure is declined and the reasons for declining. If the opposing party seeks to challenge the declination, that party shall file a motion to compel that states the reasons why disclosure is sought. Upon the filing of such motion, except to the extent otherwise provided by law, the burden shall be on the party declining disclosure to demonstrate, by affidavit and supporting memorandum citing legal authority, why such disclosure should not be made. The declining party may file its submissions in support of declination under seal pursuant to Local Rule 7.2 for the Court's in camera consideration. Unless otherwise ordered by the Court, a redacted version of each such submission shall be served on the moving party, which may reply.

(b) Ex Parte Motions for Protective Orders. This Local Rule does not preclude any party from moving under Local Rule 7.2 and ex parte (i.e. without serving the opposing party) for leave to file an ex parte motion for a protective order with respect to any discovery matter. Nor does this Local Rule limit the Court's power to accept or reject an ex parte motion or to decide such a motion in any manner it deems appropriate.

Adopted September 8, 1998; effective December 1, 1998; amended effective February 1, 2012.

RULE 116.7 DUTY TO SUPPLEMENT

The duties established by these Local Rules are continuing. Each party is under a duty, when it learns that a prior disclosure was in some respect inaccurate or incomplete to supplement promptly any disclosure required by these Local Rules or by the Federal Rules of Criminal Procedure.

Adopted September 8, 1998; effective December 1, 1998.

RULE 116.8 NOTIFICATION TO RELEVANT LAW ENFORCEMENT AGENCIES OF DISCOVERY OBLIGATIONS

The attorney for the government shall inform all federal, state, and local law enforcement agencies formally participating in the criminal investigation that resulted in the case of the discovery obligations set forth in these Local Rules and obtain any information subject to disclosure from each such agency.

Adopted September 8, 1998; effective December 1, 1998.

RULE 116.9 PRESERVATION OF NOTES

(a) General Rule. All contemporaneous notes, memoranda, statements, reports, surveillance logs, recordings, and other documents (regardless of the medium in which they are stored) memorializing matters relevant to the charges contained in the indictment made by or in the custody of any law enforcement officer whose agency at the time was formally participating in an investigation intended, in whole or in part, to result in a federal indictment shall be preserved until the entry of judgment unless otherwise ordered by the Court.

(b) Rough Drafts. These Local Rules do not require the preservation of rough drafts of reports after a subsequent draft of final report is prepared.

(c) Established Retention Procedures. These Local Rules do not require modification of a government agency's established procedure for the retention and disposal of documents when the agency does not reasonably anticipate a criminal prosecution.

Adopted September 8, 1998; effective December 1, 1998; amended effective February 1, 2012.

RULE 116.10 REQUIREMENTS OF TABLE OF CONTENTS FOR VOLUMINOUS DISCOVERY

Any party producing more than 1,000 pages of discovery in a criminal case shall provide a table of contents that describes, in general terms, the type and origin of the documents (for example, "bank records from Sovereign Bank for John Smith;" "grand jury testimony of Officer Jones") and the location of the documents so described within the larger set (for example, by Bates number).

Adopted January 3, 2012; effective February 1, 2012.

RULE 117.1 PRETRIAL CONFERENCES

(a) Initial Pretrial Conference. Within 14 days of receiving the Magistrate Judge's Final Status Report, or at the earliest practicable time before trial consistent with the Speedy Trial Act, the District Judge to whom the case is assigned must conduct a Rule 11 hearing, if the defendant has requested one, or else must convene an Initial Pretrial Conference, which counsel who will conduct the trial must attend. At the Initial Pretrial Conference the District Judge must:

(1) determine the number of days remaining before trial must begin under the Speedy Trial Act;

(2) confirm that all discovery has been produced, all discovery disputes have been resolved, and all pretrial motions under Fed. R. Crim. P. 12(b) have been filed and briefed, and schedule any necessary hearings or additional briefing on any pretrial motions under Fed. R. Crim. P. 12(b);

(3) establish a reliable trial date, which should not, except upon motion of the defendant, be less than 30 days after any evidentiary hearing on a pretrial motion under Fed. R. Crim. P. 12(b);

(4) unless the declination procedure provided by Local Rule 116.6 has previously been invoked, order the government to disclose to the defendant no later than 21 days before the trial date:

> (A) the exculpatory information identified in Local Rule 116.2 (b)(2); and
>
> (B) a general description (including the approximate date, time and place) of any crime, wrong, or act the government proposes to use pursuant to Fed. R. Evid. 404(b);

(5) determine whether the parties have furnished statements, as defined by 18 U.S.C. § 3500(e) and Fed. R. Crim. P. 26.2(f), of witnesses they intend to call in their cases-in-chief and, if not, when they propose to do so;

(6) determine whether any party objects to complying with the presumptive timing directives of subsections (a)(8) and (a)(9) for the disclosure of witnesses and identification of exhibits and materials. If any party expresses an objection, the court may decide the issues(s) presented at the Initial Pretrial Conference or may order briefing and/or later argument on such issue(s);

(7) establish a schedule for the filing and briefing of possible motions in limine and for the filing of proposed voir dire questions, proposed jury instructions, and, if appropriate, trial briefs;

(8) unless an objection has been made pursuant to subsection(a)(6), order that at least 7 days before the trial date the government must:

(A) provide the defendant with the names and addresses of witnesses the government intends to call at trial (i) in its case-in-chief, and (ii) in its rebuttal to the defendant's alibi defense (if the defendant serves a Rule 12.1(a)(2) notice). If the government subsequently forms an intent to call any other witness, the government shall promptly notify the defendant of the names and address of that prospective witness. The government shall not, however, provide the defendant the addresses of any victims whom it intends to call in its rebuttal to the defendant's alibi defense (if the defendant serves a Rule 12.1(a)(2) notice) except pursuant to subsection (a)(9).

(B) provide the defendant with copies of the exhibits and a premarked list of the exhibits the government intends to use in its case-in-chief. If the government subsequently decides to offer any additional exhibit in its case-in-chief, the government shall promptly provide the opposing party with a copy of the exhibit and a supplemental exhibit list;

(9) if the defendant establishes a need for the address of a victim the government intends to call as a witness in its rebuttal to the defendant's alibi defense (if the defendant serves a Rule 12.1(a)(2) notice), the court may:

(A) order the government to provide the information in writing to the defendant or the defendant's attorney; or

(B) fashion a reasonable procedure that allows preparation of the defense and also protects the victim's interests.

(10) unless an objection has been made pursuant to subsection (a)(6), order that at least 7 days before the trial the defendant must provide the government with witness and exhibit identification and materials to the same extent the government is obligated to do so under subsection (a)(8);

(11) determine whether the parties will stipulate to any facts that are not in dispute;

(12) establish a date for a Final Pretrial Conference, to be held not more than 7 days before the trial date, to resolve any matters that must be decided before trial, unless all parties advise the Court that such a conference is not necessary and the District Judge concurs.

(b) Special Orders. The District Judge who will preside at trial may, upon motion of a party or on the judge's own initiative, modify any of the requirements of subsection (a) of this rule in the interests of justice.

(c) Interim Pretrial Conferences. If, at the conclusion of the Initial Pretrial Conference, a reliable trial date cannot be established, or if a trial date is established but later continued by the Court, the Court shall schedule an Interim Status Conference at which the District Judge, in

consultation with the parties, must determine the time remaining under the Speedy Trial Act before which trial must begin and must adjust, as needed, the scheduling dates called for by subsections (a)(4)-(12).

Adopted September 8, 1998; effective December 1, 1998; amended effective December 1, 2009; February 1, 2012.

RULE 117.2 SUBPOENAS IN CRIMINAL CASES INVOLVING COURT-APPOINTED COUNSEL

(a) Issuance of Subpoenas. In any criminal matter in which the defendant is represented by the Federal Public Defender or other court-appointed counsel, upon request of such counsel the Clerk of Court shall issue a subpoena for hearing or trial in blank, signed and sealed, to counsel without the necessity for an individual court order.

(b) Service of Subpoenas. Upon presentation of such a subpoena, the United States Marshal shall serve it in the same manner as in other criminal cases pursuant to Fed. R. Crim. P. 17(b).

(c) Process Costs and Witness Fees. Subpoenas issued under subdivision (a) of this Rule are issued upon approval of the court. The United States Marshal shall pay the process costs and fees of any witness subpoenaed pursuant to this Rule as provided in Fed. R. Crim. P. 17(b) and 28 U.S.C. § 1825.

(d) Subpoenas in Certain Hearings. A subpoena may not be issued under this rule to compel the attendance of a witness in

(1) a preliminary hearing pursuant to Rule 5.1 or Rule 32.1(b)(1), Fed. R. Crim. P.;

(2) a detention hearing held pursuant to 18 U.S.C. § 3142(f); or

(3) or a hearing concerning the revocation of release as provided in 18 U.S.C. § 3148,

without first seeking leave from the presiding judicial officer.

Adopted January 3, 2012; effective February 1, 2012.

RULE 118.1 EFFECTIVE DATE

These Local Rules shall become effective on December 1, 1998. They shall, except as applicable time periods may have run, govern all actions pending or commenced after the effective date. Where justice so requires, proceedings in cases on the effective date shall be governed by the practice of the court before the adoption of these Local Rules.

Adopted September 8, 1998; effective December 1, 1998.

RULE 200 RENUMBERED AND AMENDED--SEE RULE 203

Effective September 1, 1990; amended effective January 2, 1995.

RULE 201 REFERENCE TO BANKRUPTCY COURT

Pursuant to 28 U.S.C. § 157(a), any and all cases arising under Title 11 United States Code and any and all proceedings arising under Title 11 or arising in or related to a case under Title 11 shall be referred to the judges of the bankruptcy court for the District of Massachusetts.

Adopted effective January 2, 1995.

RULE 202 BANKRUPTCY COURT JURY TRIALS

Pursuant to 28 U.S.C. § 157(e), the judges of the bankruptcy court for the District of Massachusetts are specially designated to conduct jury trials with the express consent of the parties in any proceeding which may be heard by a bankruptcy judge to which a right to jury trial applies.

Adopted effective January 2, 1995.

RULE 203 BANKRUPTCY APPEALS

A) The bankruptcy court is authorized and directed to dismiss an appeal filed after the time specified in Bankruptcy Rule 8002 or an appeal in which the appellant has failed to file a designation of the items for the record or a statement of the issues as required by Bankruptcy Rule 8009. The bankruptcy court is also authorized and directed to decide motions to extend the foregoing deadlines and to consolidate appeals which present similar issues from a common record. Bankruptcy court orders entered under this subsection may be reviewed by the district court on motion filed within 14 days of the entry of the order.

(B) The briefing schedule specified by Bankruptcy Rule 8018 may be altered only by order of the district court. If the clerk of the district court does not receive appellants's brief within the time specified by said Rule 8018, he shall forthwith provide the district judge to whom the appeal has been assigned with a proposed order for dismissal of the appeal.

(C) Upon receipt of the district court's opinion disposing of the appeal, the district court clerk shall enter judgment in accordance with Bankruptcy Rule 8024 and shall immediately transmit to each party, to the United States trustee and to the clerk of the bankruptcy court a notice of entry together with a copy of the court's opinion.

(D) The bankruptcy court clerk shall enclose a copy of this rule with the notice of appeal given to each party in accordance with Bankruptcy Rule 8003(c); provided, however, that failure of the clerk to enclose a copy of this rule shall not suspend its operation.

(E) This rule is not intended to restrict the district court's discretion as to any aspect of any appeal.

Effective September 1, 1990 (as Rule 200); amended effective January 2, 1995; December 1, 2009; January 6, 2015

RULE 204 BANKRUPTCY COURT LOCAL RULES

Pursuant to Rule 9029(a) of the Federal Rules of Bankruptcy Procedure, the judges of the bankruptcy court for the District of Massachusetts are authorized to make and amend rules of practice and procedure as they may deem appropriate, subject to the requirements of Fed.R.Civ.P. 83. A certified copy of any rules and/or amendments as adopted by the judges of the bankruptcy court, together with a copy of the notice and all comments received regarding the rule, shall be provided to the Clerk of the District Court within 14 days of the date adopted. Once each year, the judges of the district court will review all changes to the local rules of the bankruptcy court. If, after review, the judges of the district court determine that modifications need to be made to any rule, a report will be provided to the judges of the bankruptcy court by March 31.

Adopted May 6, 1997; effective August 1, 1997; amended effective September 15, 2006.

RULE 205 DISCIPLINARY REFERRALS BY BANKRUPTCY JUDGES

A judge of the bankruptcy court for the District of Massachusetts is authorized as a judicial officer to make referrals for disciplinary proceedings as provided under LR 83.6(5)(A).

Adopted May 6, 1997; effective August 1, 1997.

RULE 206 CORE PROCEEDINGS REQUIRING FINAL ADJUDICATION BY THE DISTRICT COURT

If a bankruptcy judge determines that entry of a final order or judgment by a bankruptcy judge would not be consistent with Article III of the United States Constitution in a particular proceeding referred under L.R. 201 and determined to be a core matter under 28 U.S.C. § 157, the bankruptcy judge shall hear the proceeding and submit proposed findings of fact and conclusions of law to the district court made in compliance with Fed. R. Civ. P. 52(a)(1) in the form of findings and conclusions stated on the record or in an opinion or memorandum of decision.

The district judge shall make a de novo review upon the record or, after additional evidence, of any portion of the bankruptcy judge's findings of fact or conclusions of law to which specific written objection has been made in accordance with the federal and local rules of bankruptcy procedure. The district judge may accept, reject, or modify the proposed findings of fact or conclusions of law, receive further evidence, or recommit the matter to the bankruptcy judge with instructions.

The district court may treat any order or judgment of the bankruptcy court as proposed findings of fact and conclusions of law in the event the district court concludes that the bankruptcy judge could not have entered a final order or judgment consistent with Article III of the United States Constitution.

Adopted June 5, 2012

APPENDIX A FEE SCHEDULE (LOCAL RULE 4.5 SUPPLEMENT)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
OFFICE OF THE CLERK
1 COURTHOUSE WAY
BOSTON, MASSACHUSETTS 02210

ROBERT M. FARRELL
CLERK OF COURT

FEE SCHEDULE
(Revised December 1, 2014)

The fees included in the District Court Fee Schedule are to be charged for services provided by the district courts. All fees are payable to the "Clerk, United States District Court."

This schedule is issued in accordance with 28 U.S.C. §§ 1913, 1914(b), 1926, 1930 and 1932.

NEW CIVIL ACTIONS

Complaint or Notice of Removal*	$400.00
Application or Petition for Writ of Habeas Corpus	$5.00
Action brought under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996	$6,355.00

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*$350 for a complaint or notice of removal filed in which the filer is provisionally granted *in forma pauperis* status pursuant to 28 U.S.C. § 1915.

NOTICES OF APPEAL

Notice of Appeal (for the First Circuit or the Federal Circuit)	$505.00
Notice of Appeal to a district judge from a judgment of conviction by a magistrate judge in a misdemeanor case	$37.00

MISCELLANEOUS FEES

Admission of an attorney to practice	$226.00
Any payment returned or denied for insufficient funds	$53.00
Certification of any document	$11.00
Copying CM/ECF case documents (per page)	$ .50
Copying or reproducing any non-electronic record or paper (per page)	$ .50
Copying non-case material from court website	$ .50
Copying or reproducing each microfiche sheet of film	$6.00
Duplicate certificate of admission or certificate of good standing	$18.00
Exemplification of any document, including apostilles	$21.00
Handling of registry funds deposited with the court	**
Filing of any document not related to a pending case or proceeding	$46.00
Initiating a case on the miscellaneous business docket	$46.00
Motion for leave to appear *pro hac vice* (per attorney)	$100.00
Reproduction of an audio recording of a court proceeding	$30.00
Retrieval of one box of records from the records center or other storage location	$64.00
For each additional box, for retrievals involving multiple boxes	$39.00
Search of the district court records (per name or item searched)	$30.00
Processing fee for a petty offense charged on a federal violation (CVB) notice	$25.00

**Contact the Financial Office at 617-748-9134

ELECTRONIC PUBLIC ACCESS FEE SCHEDULE

Available on the PACER website at http://www.pacer.uscourts.gov/documents/epa_feesched.pdf

The fee is currently 10¢ per page, not to exceed the fee for 30 pages for case-related documents. Local, state, and federal government agencies will be exempted from the increase for three years, from April 1, 2012.

APPENDIX B CIVIL COVER SHEET (JS44)

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ❒ 2 U.S. Government Defendant
- ❒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

V. ORIGIN *(Place an "X" in One Box Only)*

- ❒ 1 Original Proceeding
- ❒ 2 Removed from State Court
- ❒ 3 Remanded from Appellate Court
- ❒ 4 Reinstated or Reopened
- ❒ 5 Transferred from Another District *(specify)*
- ❒ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

❒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ❒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Print Save As... Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked**.** (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the six boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

APPENDIX C LOCAL CIVIL CATEGORY SHEET

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. **Title of case (name of first party on each side only)** _____

_____

2. **Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).**

☐ **I.** **410, 441, 470, 535, 830*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.**

☐ **II.** **110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.**

☐ **III.** **120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.**

***Also complete AO 120 or AO 121. for patent, trademark or copyright cases.**

3. **Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.**

_____

4. **Has a prior action between the same parties and based on the same claim ever been filed in this court?**

YES ☐ **NO** ☐

5. **Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)**

YES ☐ **NO** ☐

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ **NO** ☐

6. **Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?**

YES ☐ **NO** ☐

7. **Do <u>all</u> of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (<u>See</u> Local Rule 40.1(d)).**

YES ☐ **NO** ☐

A. **If yes, in which division do <u>all</u> of the non-governmental parties reside?**

Eastern Division ☐ **Central Division** ☐ **Western Division** ☐

B. **If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?**

Eastern Division ☐ **Central Division** ☐ **Western Division** ☐

8. **If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)**

YES ☐ **NO** ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME _____

ADDRESS _____

TELEPHONE NO. _____

APPENDIX D NOTICE OF SCHEDULING CONFERENCE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____
Plaintiff(s)

v. Civil Action No. _____

_____
Defendant(s)

NOTICE OF SCHEDULING CONFERENCE

An initial scheduling conference will be held in Courtroom No. _____ on the _____ floor at _____.m. on _____, in accordance with Fed. R. Civ. P. 16(b) and Local Rules (LR) 16.1 and 16.6 (for patent cases). The court considers attendance of the senior lawyers ultimately responsible for the case and compliance with sections (B), (C), and (D) of LR 16.1[1] and LR 16.6 for patent cases to be of the utmost importance. Counsel may be given a continuance only if actually engaged on trial. Failure to comply fully with this notice and with sections (B), (C), and (D) of LR 16.1 and section (A) of LR 16.6 for patent cases may result in sanctions under LR 1.3. Counsel for the plaintiff is responsible for ensuring that all parties and/or their attorneys, who have not filed an answer or appearance with the court, are notified of the scheduling conference date.

_____
Date

By:_____
Deputy Clerk

[1] These sections of Local Rule 16.1 (See LR 16.6 for additional provisions for patent cases) provide:

(B) Obligation of counsel to confer. Unless otherwise ordered by the judge, counsel for the parties shall, pursuant to Fed.R.Civ.P. 26(f), confer no later than twenty one (21) days before the date for the scheduling conference for the purpose of:

(1) preparing an agenda of matters to be discussed at the scheduling conference,

(2) preparing a proposed pretrial schedule for the case that includes a plan for discovery, and

(3) considering whether they will consent to trial by magistrate judge.

(C) Settlement proposals. Unless otherwise ordered by the judge, the plaintiff shall present written settlement proposals to all defendants no later than fourteen (14) days before the date for the scheduling conference. Defense counsel shall have conferred with their clients on the subject of settlement before the scheduling conference and be prepared to respond to the proposals at the scheduling conference.

(D) Joint statement. Unless otherwise ordered by the judge, the parties are required to file, no later than seven (7) business days before the scheduling conference and after consideration of the topics contemplated by Fed.R.Civ.P. 16(b) and 26(f), a joint statement containing a proposed pretrial schedule, which shall include:

(1) a joint discovery plan scheduling the time and length for all discovery events, that shall

(a) conform to the obligation to limit discovery set forth in Fed. R. Civ. P. 26(b), and

(b) take into account the desirability of conducting phased discovery in which the first phase is limited to developing information needed for a realistic assessment of the case and, if the case does not terminate, the second phase is directed at information needed to prepare for trial; and

(2) a proposed schedule for the filing of motions; and

(3) certifications signed by counsel and by an authorized representative of each party affirming that each party and that party's counsel have conferred:

(a) with a view to establishing a budget for the costs of conducting the full course--and various alternative courses--of the litigation; and

(b) to consider the resolution of the litigation through the use of alternative dispute resolution programs such as those outlined in Local Rule 16.4.

To the extent that all parties are able to reach agreement on a proposed pretrial schedule, they shall so indicate. To the extent that the parties differ on what the pretrial schedule should be, they shall set forth separately the items on which they differ and indicate the nature of that difference. The purpose of the parties' proposed pretrial schedule or schedules shall be to advise the judge of the parties' best estimates of the amounts of time they will need to accomplish specified pretrial steps. The parties' proposed agenda for the scheduling conference, and their proposed pretrial schedule or schedules, shall be considered by the judge as advisory only.

APPENDIX E LOCAL RULE 16.6 SUPPLEMENT
SAMPLE SPECIAL SCHEDULING ORDER FOR PATENT INFRINGEMENT CASES

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____
Plaintiff

V. Civil Action No. _____

_____
Defendant

SCHEDULING ORDER FOR PATENT INFRINGEMENT CASES

This Order is intended primarily to aid and assistcounsel in scheduling and planning the preparation and presentation of cases, thereby insuring the effective, speedy and fair disposition of cases, either by settlement or trial.

The above-entitled action having been filed on_____, it is hereby ORDERED pursuant to Rule 16(b) of the Federal Rules of Civil Procedure and Local Rules 16.1(F) and 16.6(B), that:

(A) Preliminary Disclosures

(1) Preliminary Infringement Disclosure

No later than _____ [30] days after the Rule 16 Case Management Conference, the patentee shall serve and file preliminary disclosure of the claims infringed. The patentee shall specify which claims are allegedly infringed and identify the accused product(s) or method(s) that allegedly infringe those claims. The patentee shall also specify whether the alleged infringement is literal or falls under the doctrine of equivalents. If the patentee has not already done so, the patentee shall produce all documents supporting its contentions and/or identify any such supporting documents produced by the accused infringer. Such disclosures may be amended and supplemented up to _____ [30] days before the date of the Markman Hearing. After that time, such disclosures may be amended or supplemented only pursuant to ¶ D(1) or by leave of court, for good cause shown.

The patentee may use a table such as that represented below.

CLAIM LIMITATION	ACCUSED COMPONENT	BASIS OF INFRINGEMENT CONTENTION

(2) Preliminary Invalidity and Non-Infringement Disclosures

No later than _____ [60] days after service of the patentee's preliminary infringement contentions, the accused infringer shallserve and file Preliminary Invalidity and Non-Infringement Contentions. The accused infringer shall identify prior art that anticipates or renders obvious the identified patent claims in question and, for each such prior art reference, shall specify whether it anticipates or is relevant to the obviousness inquiry. If applicable, the accused infringer shall also specify any other grounds for invalidity, such as indefiniteness, best mode, enablement, or written description. If the accused infringer has not already done so, the accused infringer shall produce documents relevant to the invaliditydefenses and/or identifyany such supporting documents produced by the patentee. Further, if the accused infringer has not already done so, the accused infringer shall produce documents sufficient to show operation of the accused product(s) or method(s) that the patentee identified in its preliminary infringement disclosures. Such disclosures may be amended and supplemented up to _____ [30] days before the date of the Markman Hearing. After that time, such disclosures may be amended or supplemented only pursuant to ¶ D(1) or by leave of court, for good cause shown, except that, if the patentee amends or supplements its preliminary infringement disclosures, the accused infringer may likewise amend or supplement its disclosures within _____ [30] days of service of the amended or supplemented infringement disclosures.

The accused infringer may use the charts shown below.

CLAIM LIMITATION	PRIOR ART OR OTHER EVIDENCE	BASIS OF INVALIDITY CONTENTION

CLAIM LIMITATION	ACCUSED COMPONENT	BASIS OF NON-INFRINGEMENT CONTENTION

(3) Disclosures in Declaratory Judgment Actions

In declaratory judgment actions initially filed by potential infringers (*i.e.*, as opposed to being stated by way of answer, counterclaim, or other response to a first-filed complaint for patent infringement), the disclosure requirements of subsections (A)(1) and (2) above apply as if the action had been initiated by the patent holder, except that (a) the preliminary infringement disclosure of the declaratory judgment defendant/patent holder shall be due not less than 90 days after the Rule 16 Case Management Conference and (b), if the declaratory judgment defendant/patent holder does not state a claim for infringement, then only the declaratory judgment plaintiff/potential infringer's disclosure requirements shall apply.

(B) Claim Construction Proceedings

(1) No later than _____ [120] days after completion of the preliminary disclosures, the parties shall simultaneously exchange a list of claim terms to be construed and proposed constructions.

(2) No later than _____ [21] days after exchanging the list of claims, the parties shall simultaneously exchange and file preliminary claim construction briefs. Each brief shall contain a list of terms construed, the party's proposed construction of each term, and evidence and argument supporting each construction. Absent leave of court, preliminary claim construction briefs shall be limited to _____ [25] pages, double spaced, of at least 12-point Times New Roman font or equivalent, including footnotes.

(3) No later than _____ [14] days following exchange and filing of the preliminary claim construction briefs, parties shall simultaneously exchange reply briefs. Absent leave of court, reply briefs shall be limited to _____[15] pages, double spaced, of at least 12-point Times New Roman font or equivalent, including footnotes.

(4) No later than _____ [14] days following exchange and filing of the reply briefs, the parties shall finalize the list of disputed terms for the court to construe. The parties shall prepare and file a joint claim construction and prehearing statement (hereafter the "joint statement") that identifies both agreed and disputed terms.

(a) The joint statement shall note the anticipated length of time necessary for the claim construction hearing and whether any party proposes to call witnesses, including a statement that such extrinsic evidence does not conflict with intrinsic evidence.

(b) The joint statement shall also indicate whether the parties will present tutorials on the relevant technology, the form of such tutorials, and the timing for such tutorials in relation to the claim construction hearing. If the parties plan to provide tutorials in the form of briefs, declarations, computer animations, slide presentations, or other media, the parties shall exchange such materials _____ [7] days before the claim construction hearing. In the alternative, the parties may present tutorials through presentations by the attorneys or experts at the claim construction hearing.

(c) The joint statement shall include a proposed order in which parties will present their arguments at the claim construction hearing, which may be term-by-term or party-by-party, depending on the issues in the case.

(d) The joint statement shall limit the number of claim terms to be construed and shall prioritize the disputed terms in order of importance. The Court suggests that, ordinarily, no more than ten (10) terms per patent be identified as requiring construction.

(e) The joint statement shall include a joint claim construction chart, noting each party's proposed construction of each term, and supporting evidence. The parties may use the form shown below.

TERM	PATENTEE'S CONSTRUCTION	ACCUSED INFRINGER'S CONSTRUCTION	COURT'S CONSTRUCTION

(C) The Claim Construction Hearing (a.k.a. "*Markman* Hearing")

The Court shall schedule a hearing date promptly after the filing of the joint claim construction statement.

(D) After the Hearing

(1) If necessary, the parties may amend their preliminary infringement/non-infringement and invalidity disclosures, noting whether any infringement or invalidity contentions are withdrawn, within [30] days after the Court's ruling on the claim construction.

(2) If the fact discovery period has expired before a ruling on claim construction, and upon motion or stipulation of the parties, the Court may grant additional time for discovery. Such additional discovery shall be limited to issues of infringement, invalidity, or unenforceability dependent on the claim construction.

(E) Expert Discovery

(1) Ordinarily, expert discovery, including expert reports and depositions, shall be scheduled to occur after the close of fact discovery.

(2) If expert discovery has been substantially conducted before a claim construction ruling, then the Court may grant additional time for supplemental expert discovery. Such additional discovery shall be limited to issues of infringement, invalidity, or unenforceability dependent on the claim construction.

By the Court,

_____ _____

Date Deputy Clerk